

under color of state law. *Id.* at 523. Courts consider factors such as the officer’s duty status or appearance at the time of an incident; however, they are not dispositive. *Martinez*, 54 F.3d at 984. Instead, it is the nature of the act itself that is controlling. *Id.* at 986. Officer Schrute’s conduct was solely in response to a personal dispute between his family and Mr. Scott, and his concern for their safety. Therefore, his actions were not related to his conduct as a police officer.

Even if Officer Schrute had acted under color of state law, his actions did not deprive Mr. Scott of a constitutional right. Officer Schrute did not use excessive force to incapacitate Mr. Scott, even after Mr. Bernard accused Mr. Scott of wielding a deadly weapon in a crowded stadium. Courts analyze excessive force claims under the Fourth Amendment’s “objective reasonableness” standard. *Graham v. Connor*, 490 U.S. 386, 395 (1989). The Court must judge the “reasonableness” of a particular use of force from the perspective of a reasonable officer on the scene. *Id.* at 396.

Courts have upheld the use of force when police officers are required to make split-second decisions—even if based on a mistake of fact—if their actions are objectively reasonable under the circumstances. *Id.* at 396-97. In the case at hand, Officer Schrute incapacitated Mr. Scott based on a credible and objectively reasonable belief that Mr. Scott, who had just drunkenly and belligerently threatened Mr. Bernard, posed a threat to the public.

ARGUMENT

I. STANDARD OF REVIEW

The Fourth Circuit reviews a district court’s grant of summary judgment *de novo*. *See, e.g., Calloway v. Lokey*, 948 F.3d 194, 202 (4th Cir. 2020) (“We review a summary judgment *de novo*, applying the same standard that the district court was required to apply.”). Federal Rule of Civil

Procedure 56 states that a “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and . . . is entitled to judgment as a matter of law.”

II. ARGUMENTS AGAINST THE PLAINTIFF’S APPEAL

The Court should deny Mr. Scott’s appeal of Officer Schrute’s granted motion for summary judgment. Based on the evidence on record, the Court should uphold the lower court’s well-reasoned finding that Officer Schrute did not act under color of state law or use excessive force when he accidentally caused Mr. Scott to trip and fall from his stadium seat.

A. Officer Schrute’s Actions Were Not Derived From His Status As A Police Officer And Were Merely Personal In Nature.

Courts grant relief under 42 U.S.C. § 1983 only if the plaintiff can show that the defendant acted under color of state law. *Rossignol*, 316 F.3d at 523. Courts have noted that determining whether or not a defendant has acted under color of state law cannot be determined by a formula or bright-line rule. *Id.*

Therefore, courts have held that for an officer’s actions to be “treated as that of the State itself,” a “sufficiently close nexus” must exist between the officer’s conduct and the State. *Id.* (citing *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)). Courts have held that a “sufficient nexus” exists between the officer’s conduct and the State when the officer is acting in an official capacity or in relation to his official duties. *Id.* (finding a “sufficient nexus” when off-duty sheriff deputies used their apparent authority to coerce the purchase of entire inventories of newspapers without legal consequences).

However, courts have also held that this “sufficiently close nexus” is not found in purely personal disputes, regardless of other indicia that an officer’s actions might be public in nature. *E.g.*, *Martinez v. Colon*, 54 F.3d at 986-88 (holding that a police officer that shot another officer was not acting under color of state law even though the defendant was in uniform, in a police

station, and used a police-issued gun because the dispute arose from personal taunting outside of official duties).

In the case at hand, Officer Schrute was attending the game with his son and brother-in-law. J.A. 15. His only relation to his occupational duties were his covered police uniform, and the brief time he spent on the field. *Id.* at 15-16. While in the stands, Officer Schrute was nothing more than a dad wearing a police officer's uniform. Officer Schrute's actions while in the stands stemmed from a purely personal dispute with Mr. Scott. Officer Schrute acted to protect his family from Mr. Scott. At no point was Officer Schrute cloaked in an "aura of authority." *Givens v. O'Quinn*, 121 F. App'x 984, 989 (4th Cir. 2005) (Luttig, J., concurring in judgment).

B. Neither Officer Schrute's Outward Indicia, Nor The Public's Perception Of It, Imposed "On-Duty" Status On Officer Schrute.

Officer Schrute, who wore a jersey over his uniform and kept his equipment in a bag while in the stands, did not don the mantle of a state official. J.A. 16. Courts have routinely held that the possession and use of state-issued equipment is not evidence that an officer acted under color of state law and that there must be some connection between the use of the equipment and the officer's official conduct. *Bailey v. Prince George's Cnty.*, 34 F. Supp. 2d 1025, 1027-28 (D. Md. 1999) (holding that, although the defendant was on-duty, wearing a uniform, and flashing her weapon, he did not act under color of law because the dispute was purely personal in nature); *Barna v. City of Perth Amboy*, 42 F.3d 809, 818 (3rd Cir. 1994) (finding that the conduct was outside of the officers' official duties and merely personal in nature, even though police-issued equipment was used in a drunken dispute between two off-duty officers and the plaintiff; therefore, the conduct was not taken under color of state law).

Furthermore, Officer Schrute, while watching a football game as a private citizen, is not automatically considered a state actor even if the public recognizes him as a police officer or

perceives him to have apparent authority. *See Martinez*, 54 F.3d at 987 (holding that the on-duty, uniformed officer was not acting as a state actor when he taunted the plaintiff with his gun because his actions were not in the course of an apparent duty of his office).

Officer Schrute explicitly told Mr. Scott that he was “off-duty and just trying to enjoy the game.” J.A. 10. Moreover, the assertion that Pam Beesly’s seeming acquiescence to Officer Schrute’s “authority” is evidence of Officer Schrute’s state actor status is in direct contradiction to Ms. Beesly’s testimony. *Id.* at 23-24. In her testimony, Ms. Beesly said she left the situation after giving a warning because “they were just fans who had gotten a little rambunctious” and “[she] didn’t want to ruin everyone’s day.” *Id.* at 24. She was not relenting because of Officer Schrute’s perceived power, but as a human being that did not want to ruin a family’s outing.

Officer Schrute’s primary purpose for being in the stands was to have a family outing with his son and brother-in-law; the on-duty on-field ceremony was tangential. *Id.* at 18. Given the totality of the circumstances, these facts clearly show that the situation was a purely personal disagreement between members of two rivalrous fan bases.

III. OFFICER SCHRUTE DID NOT USE EXCESSIVE FORCE AGAINST MR. SCOTT BECAUSE THE TYPE OF FORCE WAS OBJECTIVELY REASONABLE FOR THE SITUATION GIVEN ITS SPLIT-SECOND NATURE.

Even if Officer Schrute acted under color of state law, the force he used to subdue Mr. Scott was not excessive given the perceived risk to the surrounding citizens’ safety. The Fourth Amendment preserves the peoples’ right against unreasonable searches and seizures; however, there is no clear, bright-line rule when it comes to “reasonability.” U.S. Const. amend. IV.; *Graham*, 490 U.S. at 396. Therefore, to balance this protection with the State’s occasional need to use force in upholding the law, the Supreme Court has held that any use of force by law

enforcement in the perpetuation of their duties should be measured against an “objective reasonableness” standard. *Id.* at 388.

These determinations of reasonableness are judged from the perspective of a reasonable officer on the scene and must give allowance for an officer’s split-second judgment. *McLenagan v. Karnes*, 27 F.3d 1002, 1007 (4th Cir. 1994) (holding that an officer reasonably fired at the plaintiff given the limited time to act and limited available information). A critical factor in determining if an Officer’s actions are reasonable is the immediacy of the threat that the suspect poses to the safety of the officers or others. *Graham*, 490 U.S. at 396; *Young v. Prince George’s Cnty., Md.*, 355 F.3d 751, 755 (4th Cir. 2004) (holding that an officer’s decision to handcuff a compliant arrestee—who admitted to carrying a firearm—was reasonable in order to maintain the officer’s safety).

A. Officer Schrute’s Use Of Force Was Objectively Reasonable Because Mr. Scott Posed An Immediate Threat to the Public.

Under the given circumstances, Mr. Scott posed a tangible threat to the public; therefore, Officer Schrute’s use of force was objectively reasonable. In determining the reasonableness of force in a given situation, courts focus on the immediacy of the threat that the suspect posed to the public and the officers. In evaluating the perceived threat, the courts consider the totality of the circumstances in which the officer was acting. *Young*, 355 F.3d at 755.

Officer Schrute observed that Mr. Scott became increasingly belligerent as the game progressed. J.A. 17. Mr. Scott’s interactions with Mr. Bernard turned from an innocuous rivalrous squabble to a credible potential for public harm when Mr. Scott threatened to “fix” Mr. Bernard and aggressively reacted to Mr. Bernard’s innocent contact. *Id.* at 18-19. These instances—including Mr. Bernard’s warning about a possible knife—gave Officer Schrute plenty of credible

reason to think that Mr. Scott was about to produce a weapon when he aggressively reached in his pocket. *Id.* at 19.

This Court held in both *Slattery* and *McLenagan* that an officer's reasonable belief of a perpetrator's possession of a weapon is a sufficient showing of potential public danger. *McLenagan*, 27 F.3d at 1007 (4th Cir. 1994) (holding that a warning from another officer gave the defendant a plausible warning of an immediate threat and therefore justified the use of force); *Slattery v. Rizzo*, 939 F.2d 213, 216 (4th Cir. 1991) (finding that the plaintiff's perceived threat, due to noncompliance and the reaching towards a potential weapon, justified the officer's use of force).

B. The Immediacy Of The Threat Required Officer Schrute To Make A Split-Second Decision.

Given the tense situations that law enforcement officers face daily, courts have made allowances for an officer's on-the-spot split-second judgment when evaluating their use of force rather than with "20/20 vision of hindsight." *Graham*, 490 U.S. at 396; *see Waterman v. Batton*, 393 F.3d 471, 477 (4th Cir. 2005) (holding that the reasonableness of an officer's actions is dependent on what information they possess at the moment they use force).

Officer Schrute could only react when Mr. Scott, who had become increasingly drunk and belligerent, quickly turned on Mr. Bernard and reached into his pocket. J.A. 19. Officer Schrute took action in line with his training and expertise given Mr. Scott's temperament and Mr. Bernard's warning that Mr. Scott had a knife. *Id.* Therefore, Officer Schrute made a reasonable application of force given the surrounding context and the instantaneous demand for protective action. Indeed, this Court has repeatedly found that police officers reasonably acted when making split-second decisions under similar circumstances.

For example, in *Swann*, the court held that an officer used objectively reasonable force when he fired at the plaintiff because he believed the plaintiff was shooting at him and his fellow officers. *Swann v. City of Richmond, Va.*, 309 F. App'x 757, 759 (4th Cir. 2009). The Court grounded its decision on the fact that the officer only had a split-second to act and that inaction could have had fatal consequences. *Id.* Additionally, in *Waterman*, the Court found that the officer's gunfire into the plaintiff's vehicle was not excessive force because the officers' had a credible perception that the plaintiff was a threat. 393 F.3d at 477-78 (noting that the plaintiff's aggressive vehicular actions towards the officers—and particularly the split-second nature of the event—gave the officers sufficient reason to believe the plaintiff was about to attack).

Ultimately, Mr. Scott did not possess a weapon. However, courts have given leniency to split-second mistakes about whether or not the plaintiff possessed a deadly weapon. *See McLarenagan*, 27 F.3d at 1007-08 (4th Cir. 1994); *See also Slattery*, 939 F.2d at 215 (4th Cir. 1991) (holding that the officer's observation during a narcotics "sting" operation, where the plaintiff was noncompliant and reached for an unknown object, gave the officer reasonable belief in assuming the suspect posed a threat; therefore the officer's use of force was justified even though the unknown object was a beer bottle).

Like the officer in *McLenagan*, Officer Schrute made a split-second judgment—when the consequences of inaction could have been dire—to preserve the safety of those around him. J.A. 19. Time was of the essence; thus, Officer Schrute could not have taken the time to confirm if Mr. Scott was holding a knife before acting.

In *McLenagan*, the defendant accidentally shot the plaintiff, who sought safety following a deputy's warning about an armed escaping arrestee. 27 F.3d at 1004-05. The defendant believed that the safety-seeking plaintiff was the one in possession of a gun. *Id.* at 1005. The court held that

the split-second judgment, colored by a credible warning from a fellow officer, shielded the officer from excessive force claims. *Id.* at 1008. Additionally, the court said that in situations where an officer's inaction could have led to injury—be it to the officer or a member of the public—the court should not “second guess” the officer's mistake in judgment. *Id.* at 1007-08.

CONCLUSION

For the reasons discussed above, the Court should affirm the district court's order granting summary judgment for Officer Schrute.

Applicant Details

First Name **Danielle**
 Last Name **Musselman**
 Citizenship Status **U. S. Citizen**
 Email Address dmusselman@email.wm.edu
 Address

Address

Street
804 Glynn Springs Dr
City
Williamsburg
State/Territory
Virginia
Zip
23188
Country
United States

Contact Phone Number **2313506960**

Applicant Education

BA/BS From **Saginaw Valley State University**
 Date of BA/BS **May 2019**
 JD/LLB From **William & Mary Law School**
<http://law.wm.edu>
 Date of JD/LLB **May 22, 2022**
 Class Rank **15%**
 Law Review/Journal **Yes**
 Journal(s) **Journal of Race, Gender, & Social Justice**
 Moot Court Experience **Yes**
 Moot Court Name(s) **William & Mary Moot Court Team**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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Marcus, Paul
pxmarc@wm.edu
757-221-3900

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Danielle Musselman
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(231)350-6960

Judge Elizabeth W. Hanes
701 E Broad St,
Richmond, VA 23219

June 1, 2021

Dear Honorable Elizabeth W. Hanes,

I am a rising third-year student at William and Mary Law School. I am seeking a clerkship starting August 2022 with your Honor. I am seeking a clerkship because I believe that it will help me better serve my clients in the future by understanding how judges consider issues and decide cases. A clerkship with your Honor would be an invaluable opportunity to deepen my writing and analytical skills. I know that working for your Honor will make me a better public defender and I hope that you will consider my materials. Enclosed is my cover letter, resume, unofficial transcript, writing sample, and recommendations for your review.

I have a strong foundation as a researcher and a writer. For my undergraduate honors thesis, I created an original research topic focused on the issue of human trafficking in Michigan. Since human trafficking is a relatively new scholarly interest, I had to adapt quickly and effectively when I hit roadblocks in my research. For example, due to the lack of extensive research on campaigns to fight human trafficking, I researched other social grassroots movements, which I used as examples for how to structure a successful campaign against human trafficking. I was awarded the Outstanding Thesis Award for my ability to design, carry out, and present an innovative research project. This research and writing process helped me to learn how to find creative solutions to serious issues, respond to difficulties, and write in a compelling and organized manner.

As a legal intern and on moot court, I applied my writing and analytic skills on legal issues. During my legal internship, both in undergrad and with the Federal Public Defender's Office, I worked closely with my supervising attorneys to draft pleadings and motions in cases ranging from drunk driving to child pornography. I also monitored the status of cases in order to update my supervising attorney and contribute to a discussion of litigation strategy. I sharpened these skills further during my three seasons of moot court in undergrad and now in law school. I competed in countless competitions, analyzed the legal issues in our case from all angles, found new avenues for argument, and worked hard to create a clear, concise, and compelling argument. My skills as a writer, researcher, and advocate qualify me to clerk for your Honor and gain invaluable skills.

I appreciate your time and consideration. I hope to interview so I can further elaborate on my experience. I look forward to hearing from you.

Respectfully,

Danielle Musselman

Danielle Musselman

804 Glynn Springs Dr., Williamsburg, Virginia 23188
dmusselman@email.wm.edu (231)350-6960

EDUCATION

William & Mary Law School, Williamsburg, Virginia

Juris Doctor, expected, May 2022

G.P.A.: 3.6, Class Rank: tied at 28/230

Honors: *William & Mary Journal of Race, Gender, & Social Justice*
 Tournaments Justice, Moot Court Team
 Best Oralist in Moot Court Intrateam Tournament
 Regional Winner & National Octofinalist in ABA Moot Court Tournament
 8th Place Oralist, ABA Moot Court Regional Tournament
 CALI Award, Applied Evidence in a Technological Age

Saginaw Valley State University, Saginaw, Michigan

Bachelor of Arts, *summa cum laude*, Political Science, Communication minor, May 2019

G.P.A.: 4.0

Honors: Outstanding Graduate from the Political Science Department
 Sixth Place Orator and Third Place Overall Team at Moot Court National Invitational
Honors Thesis: *Creating Communities to Help End Human Trafficking* (Awarded Saltzman Award for Outstanding Thesis)

EXPERIENCE

The Supreme Judicial Commission of the Central Tibetan Authority

Legal Evidence Intern

June 2021 to Present

Will be revising and helping to draft the evidence code for the exiled Tibetan government.

Virginia Defenders: Indigent Defense Commission, Alexandria, Virginia

Legal Intern

June 2021 to Present

Will be working on felony cases, primarily those with mental health issues, from initial appointment through possible appeals.

Federal Public Defender's Office, Norfolk, Virginia

May 2020 to July 2020

Legal Intern

Researched and drafted objections to sentencing guidelines and the recommended sentence for cases involving drug possession and possession of child pornography. Drafted Compassionate Release motions in response to the COVID-19 pandemic sweeping through the federal prisons. Synthesized and labelled discovery for white collar fraud, credit card fraud, sentencing release violations, compassionate release, and habeas corpus cases. Assisted in client meetings to communicate information on status of the case and to glean crucial information for the case.

Saginaw Valley State University, Saginaw, Michigan

Political Science Department Research Assistant

January 2017 to May 2019

Helped to create and distribute surveys to judges, competitors, and coaches. Evaluated over 100 surveys to determine the presence of gender bias of undergraduate moot court judges. Input and organized over 400 data points across Regional and National moot court competitions to provide the basis for a research paper on the effect of female competitors' attire on their scores from judges.

PUBLICATION

The Foundation of Freedom, 9 The Sovereign 25 (2019).



WILLIAM & MARY
LAW SCHOOL
OFFICE OF CAREER SERVICES

Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

COVID-19 PANDEMIC: GRADES FOR THE SPRING 2020 TERM

In response to disruption caused by the global COVID-19 pandemic, the William & Mary Law School faculty voted to require that every course taught at the Law School during the Spring 2020 term be graded Pass/Fail. This change to Pass/Fail grading for the Spring 2020 term impacts members of our Classes of 2020, 2021, and 2022. Please note that "Pass" grades in courses graded on a Pass/Fail basis do not affect a student's GPA. As a result, class ranks for the Classes of 2020 and 2021 were not re-calculated following the Spring 2020 term, and the Class of 2022 received their initial ranking only after the Fall 2020 term.

Transcript Data**STUDENT INFORMATION****Name :** Danielle Musselman**Curriculum Information****Current Program**

Juris Doctor

College: School of Law**Major and** Law, Law**Department:**

***Transcript type:WEB is NOT Official ***

DEGREES AWARDED**Sought:** Juris Doctor **Degree Date:****Curriculum Information****Primary Degree****College:** School of Law**Major:** Law

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---------------------|--------------------------|-------------------------|-------------------------|----------------------|---------------------------|------------|
| Institution: | 59.000 | 59.000 | 59.000 | 37.000 | 131.50 | 3.55 |

INSTITUTION CREDIT [-Top-](#)**Term: Fall 2019**

| Subject | Course | Level | Title | Grade | Credit Hours | Quality R Points |
|----------------|---------------|--------------|----------------------------|--------------|-------------------------|-----------------------------|
| LAW | 101 | LW | Criminal Law | B+ | 4.000 | 13.20 |
| LAW | 102 | LW | Civil Procedure | B+ | 4.000 | 13.20 |
| LAW | 107 | LW | Torts | B+ | 4.000 | 13.20 |
| LAW | 130 | LW | Legal Research & Writing I | A- | 2.000 | 7.40 |
| LAW | 131 | LW | Lawyering Skills I | H | 1.000 | 0.00 |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|--------------------------|-------------------------|-------------------------|----------------------|---------------------------|------------|
| Current Term: | 15.000 | 15.000 | 15.000 | 14.000 | 47.00 | 3.35 |
| Cumulative: | 15.000 | 15.000 | 15.000 | 14.000 | 47.00 | 3.35 |

Unofficial Transcript

Term: Spring 2020

Term Comments: Universal Pass/Fail grading was mandated by the faculty for all Spring 2020 Law classes due to the COVID-19 pandemic. Students had no option to choose ordinary letter grades.

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|-----------------------------|-------|--------------|----------------|---|
| LAW | 108 | LW | Property | P | 4.000 | 0.00 | |
| LAW | 109 | LW | Constitutional Law | P | 4.000 | 0.00 | |
| LAW | 110 | LW | Contracts | P | 4.000 | 0.00 | |
| LAW | 132 | LW | Legal Research & Writing II | P | 2.000 | 0.00 | |
| LAW | 133 | LW | Lawyering Skills II | P | 2.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 16.000 | 16.000 | 16.000 | 0.000 | 0.00 | 0.00 |
| Cumulative: | 31.000 | 31.000 | 31.000 | 14.000 | 47.00 | 3.35 |

Unofficial Transcript

Term: Fall 2020

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|--------------------------------|-------|--------------|----------------|---|
| LAW | 308 | LW | Appl Evidence Tech Age | A | 4.000 | 16.00 | |
| LAW | 397 | LW | Virginia Criminal Procedure | A- | 3.000 | 11.10 | |
| LAW | 532 | LW | Children's Rights Seminar | B | 3.000 | 9.00 | |
| LAW | 730 | LW | Advanced Brief Writing | P | 2.000 | 0.00 | |
| LAW | 763 | LW | Journal Race,Gender,& Soc Just | P | 1.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 13.000 | 13.000 | 13.000 | 10.000 | 36.10 | 3.61 |
| Cumulative: | 44.000 | 44.000 | 44.000 | 24.000 | 83.10 | 3.46 |

Unofficial Transcript

Term: Spring 2021

| Subject | Course | Level | Title | Grade | Credit Hours | Quality Points | R |
|---------|--------|-------|--------------------------------|-------|--------------|----------------|---|
| LAW | 115 | LW | Professional Responsibility | A | 2.000 | 8.00 | |
| LAW | 140C | LW | Adv Writing&Practice:Criminal | A- | 2.000 | 7.40 | |
| LAW | 401 | LW | Crim Proc I (Investigation) | A | 3.000 | 12.00 | |
| LAW | 480 | LW | First Amend-Religion Clauses | A- | 3.000 | 11.10 | |
| LAW | 542 | LW | American Jury Seminar | B+ | 3.000 | 9.90 | |
| LAW | 704 | LW | ILR Moot Court | P | 1.000 | 0.00 | |
| LAW | 763 | LW | Journal Race,Gender,& Soc Just | P | 1.000 | 0.00 | |

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|----------------------|---------------|--------------|--------------|-----------|----------------|------|
| Current Term: | 15.000 | 15.000 | 15.000 | 13.000 | 48.40 | 3.72 |

Cumulative: 59.000 59.000 59.000 37.000 131.50 3.55

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) [-Top-](#)

| | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---------------------------|------------------|-----------------|-----------------|--------------|-------------------|------|
| Total Institution: | 59.000 | 59.000 | 59.000 | 37.000 | 131.50 | 3.55 |
| Total Transfer: | 0.000 | 0.000 | 0.000 | 0.000 | 0.00 | 0.00 |
| Overall: | 59.000 | 59.000 | 59.000 | 37.000 | 131.50 | 3.55 |

Unofficial Transcript

COURSES IN PROGRESS [-Top-](#)

Term: Fall 2021

| Subject | Course | Level | Title | Credit Hours |
|---------|--------|-------|----------------------------|--------------|
| LAW | 302 | LW | Statistics for Lawyers | 2.000 |
| LAW | 305 | LW | Trust and Estates | 3.000 |
| LAW | 355 | LW | Gender, Sexuality, & Law | 3.000 |
| LAW | 358 | LW | Electronic Discovery | 2.000 |
| LAW | 619 | LW | Supreme Court Seminar | 2.000 |
| LAW | 704 | LW | ILR Moot Court | 1.000 |
| LAW | 747 | LW | Innocence Project Clinic I | 3.000 |

Unofficial Transcript

Davison M. Douglas
John Stewart Bryan Professor of Jurisprudence

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June 04, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

With great pleasure, I strongly recommend Danielle Musselman for a federal judicial clerkship.

I know Danielle well because she was a student in my course "The First Amendment: The Religion Clauses," which I taught in the spring semester of 2021. She received an A-. I would call on her when I had a difficult case because she grasped legal concepts very quickly.

Danielle has succeeded in many different arenas during law school. In addition to a strong academic record, she won the William and Mary Law School Moot Court competition for her class. She also helped lead our Moot Court team this year to achieve a ranking of fourth in the nation. She also received the top grade in her applied evidence course.

Danielle is a very mature student, one who is also highly responsible.

I believe that Danielle will be an excellent judicial law clerk. Please let me know if I can provide you with any additional information about Danielle. If you would like to speak with me, please call my cell phone number: 757-784-1850.

Sincerely,

/s/

Davison M. Douglas
John Stewart Bryan Professor of Jurisprudence

Davison M. Douglas - dmdoug@wm.edu - 757-221-3790

Paul Marcus
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June 04, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am pleased to write this letter of recommendation for William & Mary law student Danielle Musselman who is applying for a clerkship position. I came to know Ms. Musselman in my Criminal Procedure class this past semester. She was a diligent and engaged student; I was not at all surprised that she received one of the highest grades in the course.

Ms. Musselman has excelled at the law school as a member of one of our law journals, and as an active participant in our moot court program. She has a superb undergraduate record and her work experience has been varied and first rate. This summer she will be serving as an intern for the Tibetan Government in Exile. Ms. Musselman has a pleasing personality; others will enjoy working with her.

I recommend Danielle Musselman to you.

Yours truly,

/s/

Paul Marcus
Haynes Professor of Law

Paul Marcus - pxmarc@wm.edu - 757-221-3900

Danielle Musselman

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Writing Sample

This is an objection and sentencing position motion written for the Federal Public Defender's office during this past summer. This was a case regarding a sale of methamphetamine by John Smith. Right after this sale, there was a sale of a gun by someone Smith knew of but was not associated with directly. I have obtained my supervising attorney's consent to use it as a writing sample and it is substantially my own work. The name of the defendant has been changed to "John Smith" to maintain confidentiality.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA)
)
 v.)
)
 JOHN SMITH,)
)
 Defendant.)

Objections to the Presentence Report

Mr. Smith first claims that the “safety valve” provision under 18 U.S.C. § 3553(f)(1)-(5) is applicable because Mr. Smith (1) has less than four criminal history points; (2) did not possess a firearm in connection with the offense; (3) did not cause death or serious bodily injury during this offense; (4) was not an organizer or leader; and (5) has provided all relevant information with the government regarding this offense. Second, Mr. Smith objects to the two-level dangerous weapon enhancement under U.S.S.G. § 2D1.1(b)(1). This enhancement should not apply most simply because Mr. Smith never possessed a gun.

1. **The safety valve applies as Mr. Smith meets all five criteria.**

The safety valve provision allows for a 2-point reduction under U.S.S.G. § 2D1.1(b)(17) if all five criteria are met. If it applies, the Court can issue a sentence without regard for the statutory minimum. In order for the safety valve to apply, Mr. Smith has the burden to show that all five criteria are met by a preponderance of the evidence. *United States v. Wilson*, 114 F.3d 429, 432 (4th Cir. 1997). The only criteria that is truly in contention is the second criteria: whether Mr. Smith possessed a gun in connection with the offense. Mr. Smith did not possess the gun and did not have constructive possession of the gun. Further, the gun was not connected to Mr. Smith’s sale of drugs.

a. **Mr. Smith did not possess a firearm.**

The mere presence of the gun is not enough to confer possession upon Mr. Smith. Rather, it must be shown that he had actual or constructive possession, which he did not. Mr. Smith never

actually touched or handled the gun. As a result, he could not have had actual possession. Constructive possession is more difficult to determine, but based on the precedent of this Court and other sister circuits, Mr. Smith did not have constructive possession of the firearm either.

Constructive possession is when the person has “ownership, dominion or control over the contraband itself or the premises or vehicle.” *United States v. Branch*, 537 F.3d 328, 343 (4th Cir. 2008). The definition of constructive possession has been applied across the circuits. For example, in *United States v. McLean*, the First Circuit found that McLean did not have constructive possession over the gun because McLean’s general knowledge that his coconspirators were interested in 9 mm pistols was not enough to infer McLean knew they had acquired a 20 mm pistol. 409 F.3d 492, 502-03 (1st Cir. 2005). Similarly, the facts in this case show that Mr. Smith only vaguely knew that the confidential witness was looking for a gun with no mention of what specifically H.B. was going to be selling. PSR ¶ 8(4). The confidential witness arranged for a purchase of “an 8-ball quantity of methamphetamine and a firearm with the defendant.” *Id.* In that description, however, there is no indication that Mr. Smith specifically knew what gun was being purchased before the buy, similar to McLean not knowing of what gun his coconspirators specifically had in their possession. The facts fail to show that Mr. Smith had enough information for there to be an inference of knowledge about the specifics of the gun in question.

Further, Mr. Smith was not in a position to exercise control over H.B. Mr. Smith was merely a conduit to help with communication regarding the separate transaction between H.B. and the confidential witness. The government has not alleged, and Mr. Smith never claimed any relationship, conspirator or otherwise, with H.B. Further, the safety valve provision limits the scope of liability to defendants’ own actions or actions that they commanded, induced, procured, or caused. *In re Sealed Case*, 105 F.3d 1460, 1461-63 (D.C. Cir. 1997). This limited scope excludes conspirator liability for reasonable foreseeable acts as a part of a jointly undertaken criminal activity. *Id.* This distinction is

important because the safety valve provision is to “restore individual culpability” for offenders with a minimal criminal record who got caught up in a larger criminal enterprise. *United States v. Matos*, 589 F. Supp. 2d 121, 129 (D. Mass. 2008). See also 139 Cong. Rec. S15314–01 (1993). The safety valve was created for a situation just like Mr. Smith’s. To hold Mr. Smith liable for H.B.’s possession of a gun would go against the intent behind the safety valve.

Mere communication with H.B. cannot be enough to show control or inducement over H.B. or the gun. In *United States v. Matos*, the court found that Matos did not have actual or constructive possession of the firearm that was used by an individual higher up in the drug ring. 589 F. Supp. 3d at 130-32. Even though the guns were found in Matos’ residence near marijuana, the court found that mere access and knowledge was insufficient to show possession. *Id.* at 132. In reaching this conclusion, the court looked to cases across circuits to illustrate that a low-level drug defendant does not possess contraband without an intent to possess the gun, especially when the contraband was in the possession of a more senior member in the drug ring. *Id.* at 136.¹ While the facts in *Matos* are not exactly the same as this case, there are important similarities that make the decision instructive. First, both Matos and Mr. Smith played a minor role in the drug enterprise. Mr. Smith is not a supplier, merely a seller. It does not appear that he has any real responsibility within the drug enterprise. In fact, Mr. Smith did not even possess 3.5 grams of methamphetamine on his person and had to contact Mr. Doe, his supplier and codefendant, to get the amount for the sale. Second, they both knew of the guns but did not have the intent to possess. In fact, Mr. Smith made sure that he would not possess a gun by contacting someone else. Clearly, Mr. Smith had no intent or desire to possess a gun, which is exactly why he called someone else.

¹ See *United States v. Brown*, 3 F.3d 673, 681-84 (3d Cir. 1993); *United States v. Vasquez-Chan*, 978 F.2d 546, 550 (9th Cir. 1992); *United States v. Zeigler*, 994 F.2d 845, 847-48 (D.C. Cir. 1993).

The gun was a part of a separate transaction wholly apart from Mr. Smith's control. The facts illustrate that the only individuals who were in possession of the gun and were part of the gun sale were the confidential witness and H.B. PSR ¶ 8(4).

b. The firearm was not connected to the drug offense.

Aside from possession, the firearm also has to have been connected with the offense. To meet the relation or connection requirement, the firearm must serve a purpose or have some effect on the drug crime. *United States v. Lipford*, 203 F.3d 259, 266 (4th Cir. 2000). Here, however, the sale of the gun had no effect on the sale of the drugs. The two transactions happened to occur consecutively, but one was not affected by the other.

In *United States v. Wilson*, the Court determined that the gun sale did not facilitate or relate to Wilson's drug trafficking business. 115 F.3d 1185, 1191-92 (4th Cir. 1997). Wilson tried to sell both marijuana and a firearm to another individual. The individual initially wanted to buy only the marijuana but after being offered the option of a firearm, the other individual bought only the firearm and not the marijuana. *Id.* The court stated that the gun was not used to barter for drugs and that the transaction was a "completely independent, yet contemporaneous action." *Id.* The same rationale can be applied to Mr. Smith's case. As in *Wilson*, the two transactions in question here happened to be contemporaneous. Mr. Smith sold the drugs and then H.B. sold the gun. This alone does not prove a connection. There is no showing that the sale of the gun by H.B. in any way facilitated Mr. Smith's drug sales. Further, the sales were done by two people who seem to have little to no connection with each other. Unlike in *Wilson* where the possible sales would have been done by one person, here two different people were sellers. Again, the minimal facts about H.B. do not show that H.B. has any stake or role in the selling of the drugs. As a result, H.B.'s sale of the gun cannot be said to have an effect on the drug crime. There is not enough evidence to show that the sale of the gun had any effect

on the drug sale or enterprise. As a result, the sale of the gun was not connected to the drug sale by Mr. Smith.

2. The gun enhancement should not apply as Mr. Smith did not possess the gun.

For the enhancement to apply, the government carries the initial burden of showing that the weapon was present. *United States v. Bolton*, 858 F.3d 905, 912 (4th Cir. 2017). After the government meets the initial burden, the defendant then has to show that the link between the weapon and the drug activity is clearly improbable. *Id.* Here the weapon was part of a separate transaction that was unrelated to the drug activity.

Mr. Smith's case is distinct from most gun enhancement cases, which normally involve the gun being seen on a car seat next to the defendant or being found in the defendant's house next to drug paraphernalia.² The gun was not found near Mr. Smith. The gun was not found in Mr. Smith's residence. The gun was never handled by Mr. Smith. H.B. does not appear to be a part of the drug transaction or business in which Mr. Smith was participating. The presence of the gun was separate and unrelated to Mr. Smith's drug sale. For the same reasons that were argued above as to why the gun was not connected to the drug transaction, it is also clearly improbable that the gun sale was related to the drug activity of Mr. Smith.

Further, even if the enhancement were to apply, this does not preclude the application of the safety valve. This circuit and other circuits have held that the "clearly improbable" standard under the enhancement and the preponderance of the evidence standard under the safety valve is an important distinction. *Bolton*, 858 F.3d at 914.³

² See *United States v. Paul*, 787 F. App'x 191, 192-93 (4th Cir. 2019); *United States v. Snyder-Windle*, 750 F. App'x 233, 234-35 (4th Cir. 2019); *United States v. Mondragon*, 860 F.3d 227, 231-32 (4th Cir. 2017) (finding that witness testimony linking defendant to having a gun during interactions solely related to drug trafficking was enough to satisfy the standard); *United States v. Britt*, 643 F. App'x 288, 290 (4th Cir. 2016) (finding that Britt sold drugs out of his house and a gun was found in that house).

³ See, e.g., *United States v. Carillo-Ayala*, 713 F.3d 82, 91 (11th Cir. 2013); *United States v. Anderson*, 452 F.3d 87, 90 (1st Cir. 2006); *United States v. Zavala-Rodriguez*, 379 F.3d 1182, 1188 (10th Cir. 2004); *United States v. Bolka*, 355 F.3d 909, 914 (6th Cir. 2004); *United States v. Nelson*, 222 F.3d 545, 549-51 (9th Cir. 2000).

Sentence Requested

There is no question that Mr. Smith committed a serious offense that is worthy of punishment; however, the time that he has already served is sufficient. This request is sufficient but not greater than necessary as the application of the safety valve and the removal of the gun enhancement would lower Mr. Smith's total offense level from 25 to 21 giving him a guideline range of 37-46 months. Further, the application of the safety valve allows the court to give a sentence that is lower than the statutory minimum sentence. U.S.S.G § 5C1.2. As a result, the Court is able to grant Mr. Smith a sentence of time served.

1. Mr. Smith's history and characteristics support a sentence of time served.

Mr. Smith is a man with a drug problem who does not need more time in prison to know that this was a serious offense that he does not wish to repeat. Mr. Smith has had a difficult life, but despite that has been able to avoid having a long criminal history. His criminal history category is I and his only offense that resulted in any criminal history points was a Driving Under the Influence offense in 2016. Despite the odds that were stacked against him, this is essentially Mr. Smith's first offense.

Mr. Smith's childhood was a difficult one. His brother, Charles, and sister-in-law, Rebecca, described Mr. Smith's childhood as one marked with emotional abuse. PSR ¶ 48. They explained that Mr. Smith's father was emotionally abusive to Mr. Smith and the other children and that he also physically abused Mr. Smith's mother. *Id.* Emotional abuse is a type of abuse that has been hard to define, but still has been shown to have extremely detrimental effects on its victims.⁴ Despite the fact that emotional abuse is not as easy to identify as the bruises left from physical abuse, the long-term effects are just as serious, if not more serious, as those associated with childhood physical abuse.⁵ In fact, some research has indicated that emotional abuse may be a better predictor of psychological,

⁴ Prevent Child Abuse America, *Preventing Emotional Abuse*, available at <https://preventchildabuse.org/resource/preventing-emotional-abuse/>

⁵ *Id.*

emotional, and behavioral impairments than physical abuse.⁶ While such a childhood is not an excuse for Mr. Smith's behavior it does help to explain why he may have turned to drugs as a way to deal with the trauma of that childhood abuse.

Mr. Smith was facing turmoil and emotional attacks home. Yet, despite these early difficulties, Mr. Smith has maintained employment. Mr. Smith has maintained steady employment since 2006 up to the present offense. Mr. Smith has been trying his best to survive in a world that can be difficult and tumultuous. Unfortunately, it is made even more so by his issues with substance abuse. While Mr. Smith has used some substances, his main addiction is to methamphetamine. PSR ¶ 55-57. He began using methamphetamine two years ago and has continued to use it daily since then. PSR ¶ 56. While Mr. Smith does have some difficulty fully realizing the depth of his drug problem, he does see that his use of methamphetamine played an instrumental role in the instant offense. *Id.* This addiction shows that what Mr. Smith needs is not incarceration, but drug treatment for his addiction. Methamphetamine addiction may start as a choice, but it then becomes something the individual has no control over. After the initial choice to start using methamphetamine, the chemical makeup and circuitry in the addict's brain becomes altered due to the methamphetamine use and creates dependence.⁷ Merely sending someone to prison will not effectively change or have an effect on the brain's altered state due to methamphetamine use.

The best way forward for Mr. Smith is to place him on supervised release and ensure that he get substance abuse help. Supervised release can fulfill Mr. Smith's needs and will be more effective in lowering his likelihood of reoffending than prison. The National Institute on Drug Abuse recommends at least 90 days in a specialized addiction treatment program to effectively treat

⁶ Danya Glaser, *Emotional Abuse and Neglect (Psychological Maltreatment): A Conceptual Framework*, 26 Child Abuse & Neglect 697 (2002).

⁷ American Addiction Centers, *Facts about Meth Addiction*, available at <https://americanaddictioncenters.org/meth-treatment/facts> (last updated Feb. 3, 2020).

methamphetamine addiction.⁸ Methamphetamine addiction needs to be treated effectively in programs that involve cognitive therapy and/or specialized treatment to help handle any possible long-term damage due to use.⁹ That is the best way to ensure that there is not a relapse in recovery, and in reoffending.¹⁰

Mr. Smith is ready and willing to undergo treatment. He knows that if he is going to turn his life around he has to get proper treatment to ensure that he stays away from the substance that led to this offense in the first place. Unfortunately, Mr. Smith was unable to get employment while on supervised release, which resulted in a violation. PSR ¶ 29. However, the court can fashion supervised release to give him the necessary job training so that he is able to get employment. Aside from that issue, Mr. Smith was cooperative while on supervised release.

Mr. Smith is ready to change; he just needs some support and treatment to ensure that the change lasts. He has a young one-year-old daughter who he wants to see grow up. The only way that he can be in her life is if he is given treatment for his addiction. Mr. Smith needs methamphetamine treatment and job training, not prison, for himself, for his daughter, and to ensure that he does not commit another offense.

2. The guidelines for sentencing of “ice” are fundamentally flawed.

Mr. Smith’s largest drug weight was due to his sale of “ice” or pure methamphetamine. For his sale of 20 grams of “ice” the converted weight under the guidelines is 416 kilograms. The ratio of “ice” to regular methamphetamine is 10 to 1, with no explanation as to why “ice” is treated so harshly under the guidelines. *See* U.S.S.G. 2D1.1. The commentary does claim that the difference in treatment is that drugs with higher purity often are possessed by individuals who have a higher role in the drug

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

enterprise. U.S.S.G. § 2D1.1 cmt. n.27(c). There is not any empirical evidence cited to support the claim that drug purity is associated one's role in the enterprise.

This distinction, however, is without meaning due to the fact that methamphetamine in recent years has had higher levels of purity, even when it is not “ice.” In fact, data from the Drug Enforcement agency shows that methamphetamine had a purity of over 90% from 2013 through 2018.¹¹ The high level of purity in methamphetamine renders the distinction between “ice” and methamphetamine drawn by the guideline entirely meaningless. “Ice” perhaps once was significantly more pure than regular methamphetamine, but that is not the case any longer. In *United States v. Nawanna*, the judge found that the “Commission's emphasis on an outdated assumption about methamphetamine purity as a proxy for culpability can lead to perverse sentencing outcomes.” 321 F. Supp. 3d 943, 952 (N.D. Iowa 2018). The finding in *Nawanna* has been supported by other judges in Iowa, Virginia, Nebraska, Michigan, and others.¹² These courts have all acknowledged that the Sentencing Commission did not rely on empirical data when they established the methamphetamine guidelines.

The fact that the purity of all methamphetamine is around 90% means that it does not indicate in any way the role an individual has in the drug enterprise. Even a low level seller, like Mr. Smith, can get access to “ice” because it is only about 10% more pure than the methamphetamine he would normally sell. Methamphetamine is no longer being diluted as it goes down the supply line within the

¹¹ Drug Enforcement Agency, *2019 National Drug Threat Assessment*, available at

https://www.dea.gov/sites/default/files/2020-01/2019-NDTA-final-01-14-2020_Low_Web-DIR-007-20_2019.pdf.

¹² See *United States v. Ortega*, No. 09-400, 2010 WL 1994870 (D. Neb. May 17, 2010); *United States v. Haves*, 948 F. Supp. 2d 1009 (N.D. Iowa 2013) (Bennett, J.); *United States v. Jennings*, No. 4:16-CR-48-BLW, 2017 WL 2609038 (D. Idaho June 15, 2017); *United States v. Ibarra-Sandoval*, 265 F. Supp. 3d 1249, 1256 (D.N.M. 2017); *United States v. Saldana*, No. 1:17-cr-271-1, 2018 U.S. Dist. LEXIS 110790, at *7-10 (W.D. Mich. July 3, 2018); *United States v. Ferguson*, No. CR 17-204 (JRT/BRT), 2018 WL 3682509, at 3-4 (D. Minn. Aug. 2, 2018); *United States v. Pereda*, No. 18-cr-00228-CMA, 2019 WL 463027 (D. Colo. Feb. 6, 2019); *United States v. Bean*, 371 F. Supp. 3d 46 (D.N.H. 2019); *United States v. Rodriguez*, 382 F. Supp. 3d 892 (D. Alaska 2019).

drug enterprise, rather it maintains a large majority of its purity even when it is far down the supply line. As a result, methamphetamine now hits the streets in a purer form than in the past.

Mr. Smith should not be sentenced based on this unfair and unsubstantiated weighing of “ice” in comparison to methamphetamine. Rather, the Court should acknowledge and take account of the flawed nature of the methamphetamine guidelines.

3. A lengthy prison sentence is not necessary to ensure that Mr. Smith does not reoffend.

The Sentencing Commission published a study from 2017 evaluating the recidivism among federal drug trafficking offenders. U.S. Sentencing Comm’n, *Recidivism Among Federal Drug Trafficking Offenders* (2017). The study found that the length of a sentence had a minimal effect on ensuring that an individual reoffends. *Id.* at 94. Rather, the criminal history and age of the offender was more predictive of an individual’s likelihood to reoffend. *Id.* The study showed that an individual who was older than 30 and had a low criminal history was significantly less likely to reoffend. *Id.* Mr. Smith is now 40 years old and has a criminal history category of I. His age and criminal history category alone ensure that he is less likely to reoffend. A lengthy prison sentence would be unnecessary and excessive for Mr. Smith. *See United States v. Banister*, 786 F. Supp. 617, 690 (E.D.N.Y. 2011) (finding for nonviolent, low-level drug crimes, the goals of sentencing could in most cases be achieved with limited incarceration).

Conclusion

A sentence of time served is a sufficient but not greater than necessary sentence for Mr. Smith given the circumstances of his case. Should this Court decline to sustain the defense objection relative to safety value, a sentence at the mandatory minimum of 5 years is more than sufficient, but not greater than necessary. Additionally, should this Court choose to incarcerate Mr. Smith any further, he respectfully requests that he be recommended for RDAP to address his substance abuse issues.

Applicant Details

| | |
|----------------------|---|
| First Name | Megan |
| Middle Initial | MA |
| Last Name | Neal |
| Citizenship Status | U. S. Citizen |
| Email Address | nealmm19@wfu.edu |
| Address | <div> Address Street 4807 Ridgeside Drive City Dallas State/Territory Texas Zip 75244 Country United States </div> |
| Contact Phone Number | (214) 608-3480 |

Applicant Education

| | |
|-----------------------|---|
| BA/BS From | University of Texas-Austin |
| Date of BA/BS | May 2017 |
| JD/LLB From | Wake Forest University School of Law |
| | http://www.law.wfu.edu |
| Date of JD/LLB | May 16, 2022 |
| Class Rank | 50% |
| Law Review/Journal | Yes |
| Journal(s) | Wake Forest Law Review |
| Moot Court Experience | Yes |
| Moot Court Name(s) | Wake Forest Moot Court Board |

Bar Admission**Prior Judicial Experience**

| | |
|--------------------------------------|------------|
| Judicial Internships/ Externships | Yes |
| Post-graduate Judicial Law Clerk | No |

Specialized Work Experience

Recommenders

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References

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Megan M. Neal
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The Honorable Elizabeth W. Hanes
U.S. District Court for the Eastern District of Virginia
Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse
701 East Broad Street
Richmond, VA 23219

June 27, 2021

Dear Judge Hanes,

I am a rising third-year law student at Wake Forest School of Law. I write to apply for a clerkship in your chambers for the 2022-2024 term. I would appreciate the opportunity to learn from your experiences as a judge, in the public sector, and in private practice. Additionally, I am particularly interested in your chambers because I would like to remain in the Southeast after graduating from Wake Forest.

I am particularly well suited for this position because of my strong writing, research, analytical, and editing skills. For example, I serve as an Executive Editor for the *Wake Forest Law Review* and earned a spot on Moot Court through my performance in the Edwin M. Stanley Moot Court Competition. I earned As in my first-year legal writing and research courses. I also serve as a Research Assistant for Professor Abigail Perdue. In this role, I conduct research and draft memoranda summarizing my findings.

Additionally, my previous judicial experiences will allow me to serve your chambers effectively. During my 1L summer, I externed at the U.S. Department of Housing and Urban Development's Office of Hearings and Appeals. While externing, I drafted opinions and conducted objective research, which helped me refine my legal writing, analytical skills, and ability to craft persuasive arguments. This role also required attention to detail and sensitivity to issues of confidentiality. In congruence with my externship, I took a class on judicial clerking and earned the highest grade available. This class covered the roles and responsibilities of judicial clerks and involved drafting orders and a judicial opinion. Furthermore, during the Spring 2022 semester, I will be externing for The Honorable David S. Cayer, a United States Magistrate Judge in the Western District of North Carolina. These collective experiences will enable me to add immediate value in your chambers.

Included are my resume, transcript, writing sample, and letters of recommendation from Professors Abigail Perdue, Timothy Davis, and Matthew Houston. Please feel free to contact me at (214) 608-3480 or nealmm19@wfu.edu if I can provide you with any additional information. Thank you for your consideration.

Respectfully,



Megan Neal

MEGAN M. NEAL

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EDUCATION

Wake Forest University School of Law, Winston-Salem, NC

Candidate for Juris Doctor, May 2022

- **Cumulative GPA:** 3.356
- **Journal:** *Wake Forest Law Review*, Executive Editor
- **Activities:** Wake Forest Moot Court (Edwin M. Stanley Moot Court Competition Honorable Mention); Research Assistant for Professor Abigail Perdue; Teaching Assistant, Sale of Goods Transactions (Fall 2021); Academic Engagement Program Leader (Contracts); Expungements Clinic
- **Scholarship:** Dean's Scholarship Recipient

The University of Texas at Austin, Austin, TX

Double Major, May 2017: *B.A., International Relations and Global Studies* and *B.A., French*

Minor: *European Studies*

- Studied abroad in Aix-en-Provence, France

WORK EXPERIENCE

United States Magistrate Judge David S. Cayer, Western District of North Carolina, Charlotte, NC

Judicial Extern, Anticipated Dates Spring 2022

Federal Reserve Bank of Dallas, Dallas, TX

Legal Intern, Summer 2021

Office of Hearings and Appeals, Department of Housing and Urban Development, Washington, DC

Judicial Extern, Summer 2020

- Drafted initial agency decisions and orders for Administrative Law Judges presiding over U.S. Department of Housing and Urban Development hearings involving federal debt collections and fair housing and U.S. Small Business Administration hearings involving administrative offsets
- Conducted objective legal research on federal case law, federal regulations, and Executive Orders and drafted relevant memoranda

Fragomen, Del Rey, Bernsen & Loewy, LLP, Dallas, TX

Administrative Assistant, June 2018 – August 2019, July 2017 – August 2017

- Drafted I-140 Multinational Manager support letters demonstrating that beneficiaries met applicable immigration criteria
- Processed employment-based Adjustment of Status cases
- Contacted clients and beneficiaries regarding non-immigrant and immigrant cases
- Assisted with office change to a new technology platform by reviewing migrating data

Teaching Assistant Program in France, Montpellier, France

Language Assistant, October 2017 – April 2018

- Planned and taught English classes to French students at four French elementary schools
- Lessons focused on English vocabulary and grammatical structures and American culture

Kan Law, PC, Dallas, TX

Intern, Summer 2015

- Contacted clients regarding beneficiaries and the H-1B visa process
- Assembled H-1B visa application packets

SKILLS & INTERESTS

Language: French (proficient)

Interests: Reading fiction novels, running, and rowing

KE RE



Abigail L. Perdue

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Director, D.C. Summer Judicial Externship Program

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March 9, 2021

Dear Judge,

I write to recommend that you hire my former student and current research assistant, Megan Neal, as your law clerk. Megan is a strong writer and researcher. Not only is she intelligent, dependable, detail-oriented, and hardworking, but she also possesses character and integrity that simply cannot be taught. For all of these reasons, I know Megan would make a meaningful contribution to your chambers, and I strongly recommend her.

The summer after her first year of law school, Megan participated in Wake Forest's prestigious D.C. Summer Judicial Externship Program. As part of the Program, she externed for a federal administrative law judge in Washington, D.C. She performed many of the functions of a law clerk, conducting discrete research, drafting and editing opinions, and more. By all accounts, Megan did a great job so much so that her judge sought to hire another extern from our Program again this year. The judge's willingness to do so speaks volumes about Megan's performance during the externship.

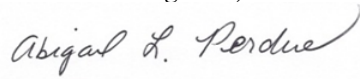
As part of the Program, Megan also took my *Judicial Clerking* course. The course addresses ethics, confidentiality, professionalism, and judicial drafting. She studied *The All-Inclusive Guide to Judicial Clerking*. Megan drafted an 11-day memo and a judicial opinion on a real, pending appellate case. All of her writing assignments were excellent. Megan met and mingled with judges, practitioners, and law clerks. Megan excelled in the course, earning an Honors Pass, which is the highest grade available. Because of her Program participation, Megan is uniquely well-prepared to hit the ground running in your chambers.

Throughout the pandemic, Megan has maintained her positive attitude, sincerity, and dedication. I use the much-feared Socratic Method, and Megan answered even difficult questions with ease. She arrived punctually and extremely prepared to every session. She did not miss a single class during the term. A perfectionist by nature, Megan never settled for good enough; she always aspired to deliver her best effort on each and every assignment. She asked insightful questions to each guest speaker.

As a result of her strong performance in my summer class, I invited Megan to serve as my research assistant this year. Megan has again exceeded my expectations. She always rises to the challenge and does not require micromanagement. She produces high quality, reliable work with minimal instruction and oversight. She meets deadlines and manages her time well. She is not afraid to ask questions, and she did a phenomenal job spading a law review article for me this spring. She has contributed tremendously to my scholarly output this year. She has been one of the most efficient, effective, thorough, and detail-oriented student researchers with whom I've worked. You can always depend on her and trust her work.

As a former practitioner and federal law clerk, I understand that character, personality, and integrity are often equally, if not more, essential to successful performance as a law clerk. Megan also excels in this regard. She is sincere, quiet, trustworthy, and polite. I know that she would make a meaningful contribution to your chambers. For all of these reasons, I highly recommend her. Please feel free to contact me should you have any questions. Thank you for considering her.

Regards,

A handwritten signature in cursive script that reads "Abigail L. Perdue". The signature is written in dark ink on a light-colored background.

Professor Abigail L. Perdue
Wake Forest University School of Law

June 28, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

Megan Neal has requested that I support her application for a clerkship with your court. Ms. Neal was enrolled in my Contracts I, Contracts II, and Sale of Goods classes. Given these multiple opportunities to assess Megan's capabilities, I am comfortable speaking to her qualifications for a judicial clerkship.

The story of Ms. Neal's law school experience is that of a very capable student who entered law school with a solid educational foundation and has consistently added to that foundation. In Contracts I, Megan demonstrated a range of skills including her responses to my questions that exhibited high levels of understanding of the substantive concepts and preparation. Megan's enrollment in Contracts II afforded me an opportunity to observe first hand, the considerable extent to which Megan's intellectual depth and sophistication had further developed after having completed only a semester of law school. Spring of 2021, Megan was enrolled in my Sales class and I once again had the opportunity to observe the continued growth in her lawyering skills.

Megan continues to demonstrate the admirable traits that I first observed in Contracts I. These include Megan's high level of preparedness for class and her willingness and ability to actively engage with the material during class. The seriousness with which Megan takes law school has also remained a constant. While Megan is very present, she keeps an eye on her future as an attorney. Consequently, Megan has taken advantage of the learning opportunities that have facilitated her success during law school and will contribute to her success as an attorney. In addition to her classroom experiences, Megan's commitment to learning has been demonstrated by the activities in which she is involved, including law review and moot court.

Two matters illustrate Megan's capabilities. At the beginning of Megan's second year, I recommended her to serve as a study leader for students in my Contracts class. Megan was selected and met my expectations. Students commented on her understanding of the material and her clarity in explaining it to them. As mentioned above, Megan was enrolled in my Sales class. During the semester, I was so impressed by Megan's understanding of the material that I asked her to serve as my Sales teaching assistant for the fall 2021 semester even though she had not taken the course final exam. My confidence in Megan's mastery of the material was confirmed by the A- that she earned in Sales.

Finally, Megan displays a pleasant and mature demeanor that makes her both a formal and an informal leader amongst her peers. She has a delightful sense of humor and is a steadying presence. I believe these traits are likely to converge with Megan's intellectual capabilities in ways that will allow her to contribute to your work effort and to learn from her clerkship experience.

Megan is an excellent candidate for the clerkship with your court. Therefore, I unequivocally recommend her.

Sincerely,

Timothy Davis
John W. & Ruth H. Turnage
Professor of Law

Timothy Davis - davistx@wfu.edu

MEGAN M. NEAL

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I prepared the following brief for my 2L Appellate Advocacy class and the accompanying Stanley Moot Court Competition. I have excerpted several sections of the brief due to its length, but I am happy to provide the whole brief if anyone would like to see it.

The fictional problem pertained to a woman, Joyce Byers, who was hit by a foul ball while in the concession stand at a minor league baseball game. The game took place in Maryland, and the Fourth Circuit, sitting in diversity, heard the case.

The stadium, in which the Hawkins Tigers baseball team played, argued that Maryland should adopt the Limited Duty Rule—a rule adopted in several other jurisdictions that shields baseball stadiums from liability for foul ball injuries. Ms. Byers, who I represented, argued that the Rule is outmoded and effectively prevents injured stadium patrons from recovering under any circumstances, and thus should not be adopted.

SUMMARY OF THE ARGUMENT

This Court should reverse the district court's ruling because it incorrectly determined that the Maryland Court of Appeals would adopt the Limited Duty Rule. The Limited Duty Rule, sometimes referred to as the Baseball Rule, prevents baseball stadiums from incurring liability after spectators are injured at baseball games.

The Maryland Court of Appeals would not adopt the Limited Duty Rule. First, the Limited Duty Rule is inconsistent with Maryland tort law, which shifts liability to premises owners when the risk of injury is foreseeable. The Limited Duty Rule improperly places the burden of foreseeing harm on spectators, even though stadiums are more capable of foreseeing harm. Second, the Limited Duty Rule is based on an outmoded version of baseball. While the Rule has largely remained unchanged for a century, baseball has changed immensely in that time. Third, the Limited Duty Rule should be adopted, if at all, by the legislature, rather than the courts. The Rule represents a major policy shift that should be addressed by the legislature after further evaluation, which has not occurred here. Accordingly, the Court should reverse the district court's grant of summary judgment.

ARGUMENT

Ms. Byers was injured due to the Hawkins Tigers' negligent conduct. Maryland tort law requires plaintiffs in a negligence action to show (1) duty; (2) breach of duty; (3) causation; and (4) damages. *Jacques v. First Nat'l Bank*, 515 A.2d 756, 758 (Md. 1986).

In this case, duty is the only element of negligence at issue. Accordingly, the Court must determine what duty the Hawkins Tigers owed to Ms. Byers. In determining if a duty exists, the principal factor courts consider is "the foreseeability of harm to the plaintiff." *Ashburn v. Anne*

Arundel Cnty., 510 A.2d 1078, 1083 (Md. 1986) (quoting *Tarasoff v. Regents of University of California*, 551 P.2d 334, 342 (Cal. 1976)).

In deciding this issue, the trial court correctly followed Maryland law, because “[a] federal court sitting in diversity must apply the forum state’s choice-of-law rules.” *In re Nantahala Village, Inc.*, 976 F.2d 876, 880 (4th Cir. 1992) (quoting *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). Maryland’s choice of law rule, *lex loci delicti*, dictates applying the law of the place of harm. *Hauch v. Connor*, 453 A.2d 1207, 1209 (Md. Ct. App. 1983). As the harm in this case occurred in Maryland, Maryland law applies. Thus, the Court must predict how the Maryland Court of Appeals would decide this matter.

This case presents an issue of first impression under Maryland law. The district court erred in granting summary judgment to the Hawkins Tigers and determining that Maryland would adopt the Limited Duty Rule. The Limited Duty Rule establishes the minimum requirements for baseball stadiums to avoid liability when spectators are injured. *See, e.g., Benejam v. Detroit Tigers, Inc.*, 635 N.W.2d 219, 225 (Mich. Ct. App. 2001) (holding that stadiums that provide the necessary screening cannot incur liability for foul ball injuries). These requirements oblige stadiums to “provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest . . . [S]uch screening must be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game.” *Akins v. Glens Falls City Sch. Dist.*, 424 N.E.2d 531, 533 (N.Y. 1981). Stadiums that have fulfilled these requirements are effectively protected from liability. *Benejam*, 635 N.W.2d at 225.

Here, Ms. Byers was a business invitee at the game, and was therefore owed a higher duty of care than would be afforded by the Limited Duty Rule. Accordingly, the Court should decline to adopt the Limited Duty Rule and decide this matter under ordinary tort principles.

I. The Maryland Court of Appeals would reject the Limited Duty Rule because it contravenes well established principles of Maryland tort law, reflects an outdated version of baseball, and should be left to the legislature.

Determinations of duty serve to “balance the burdens between the parties in avoiding the harm.” *Rosenblatt v. Exxon Co., U.S.A.*, 642 A.2d 180, 189 (Md. 1994). Business owners, rather than invitees, are in the superior position to foresee and prevent these harms, and thus owe a greater duty. *Lloyd v. Bowles*, 273 A.2d 193, 196 (Md. 1971) (stating that there is “a presumption that [a business owner] has greater knowledge concerning the dangerous condition than the invitee”). Therefore, the Stadium owes a greater duty to Ms. Byers because it is undisputed that she was a business invitee. The Limited Duty Rule would contravene this longstanding principle by allowing the Stadium, which has the best opportunity to foresee and protect against harm, to avoid liability through this outmoded rule. A departure of this kind from ordinary tort law principles should be left to the consideration of the legislature, and not the courts. *See South Shore Baseball, LLC v. DeJesus*, 11 N.E.3d 903, 909 (Ind. 2014).

A. This matter should be decided under traditional negligence principles because the Limited Duty Rule contravenes the longstanding principle of placing the burden of foreseeable risks on business owners, while still affording business owners adequate defenses in the face of invitee injury claims.

Maryland tort law emphasizes the importance of foreseeability in determining if a duty exists. *See Jacques*, 515 A.2d at 760 (stating that in cases involving physical injury, foreseeability is “the principal determinant of duty”). In premises liability cases, landowners have a duty to ensure that business invitees are not “subjected to any risk or danger arising from

the physical state of [their] property, except such as was naturally and ordinarily incident to the nature of its business.” *Mondawmin Corp. v. Kres*, 266 A.2d 8, 12 (Md. 1970) (quoting *Moore v. American Stores Co.*, 182 A. 436, 438 (Md. 1936)); see also *Sutton-Witherspoon v. S.A.F.E. Mgmt., Inc.*, 203 A.3d 1, 13 (Md. Ct. Spec. App. 2019). Accordingly, landowners are liable if they “had actual or constructive knowledge of a condition which created an unreasonable risk of harm to the invitee”; “should have anticipated that the invitee would not discover the condition or realize the danger, or would fail to protect herself from the danger”; and “failed to take reasonable means to make the premises safe or to give adequate warning of the condition to the invitee.” *Lloyd*, 273 A.2d at 196. Here, Ms. Byers was undisputedly a business invitee. Accordingly, the Stadium had a duty to ensure that she was not “subjected to any risk or danger arising from the physical state of” the Stadium.

The Limited Duty Rule, however, evades the consideration of foreseeability by setting a bare minimum standard for stadiums to meet. In doing so, it contravenes Maryland’s established tort principles by improperly shifting liability from the business owner back to the business invitee.

Here, the Stadium was aware that spectators could be injured in the concourse. The concession stands are located behind first and third base. Spectators also have to fully face away from the field to order. Even if spectators attempt to follow the game while in line, spectators at the front of the line cannot see the field even if they turn around. Moreover, the Stadium “failed to take reasonable means” to protect spectators in the concourse. Even though foul balls have entered the concession stands ten to eleven times in the past five years, the Stadium has not added any signs or screening in that area of the ballpark. Additionally, Ms. Byers’ ticket did not have a disclaimer warning her of the risk of injury or stating that she waived liability, but even if

it had, this disclaimer would not bar the Stadium from liability. *See* Nathaniel Grow & Zachary Flagel, *The Faulty Law and Economics of the “Baseball Rule,”* 60 WM. & MARY L. REV. 59, 65 (2018) (stating that the liability waivers on tickets are “generally unenforceable”).

Furthermore, Ms. Byers herself is not familiar with baseball, and thus was unaware of the possibility of injury in the concession area. Nonetheless, even if Ms. Byers was familiar with baseball, it does not matter. *See Jones v. Three Rivers Mgmt. Corp.*, 394 A.2d 546, 548, 552 (Pa. 1978) (declining to adopt the Limited Duty Rule even though the plaintiff, who was injured at a minor league baseball stadium, was a baseball fan and had attended numerous major league baseball games).

Accordingly, the Stadium was in a better position to foresee the harm of a foul ball in the concession stand than Ms. Byers. The Limited Duty Rule would unfairly remove liability from the Stadium and shift responsibility to spectators with lesser ability to foresee the danger of foul balls. *See City of Milton v. Broxson*, 514 So.2d 1116, 1119 (Fla. Dist. Ct. App. 1987) (holding that the defendant city, which owned parks where baseball games took place, should have known of the risk of injury to spectators from foul balls and was liable for failing to address this risk).

Furthermore, while failing to adopt the Limited Duty Rule may appear to make stadiums strictly liable for foul ball injuries, this is not so. Rather, Maryland retains the defenses of assumption of the risk and contributory negligence. *See Coleman v. Soccer Ass’n of Columbia*, 69 A.3d 1149 (Md. 2013) (upholding contributory negligence); *Crews v. Hollenbach*, 751 A.2d 481 (Md. 2000) (holding that the plaintiff in a negligence case could not recover because he had assumed the risk of injury); *Kelly v. McCarrick*, 841 A.2d 869 (Md. Ct. Spec. App. 2004) (holding that the doctrine of assumption of the risk barred a plaintiff injured while playing sports from pursuing a negligence claim). Thus, stadiums that can show that an injured spectator either

assumed the risk of injury or was contributorily negligent will face no liability. Accordingly, ordinary tort principles adequately address spectator injuries by providing stadiums with generous defenses and do not impose strict liability on stadiums.

B. The Limited Duty Rule is predicated on an outdated version of baseball that presented significantly fewer risks to spectators than baseball as it is played today.

The Maryland Court of Appeals would reject the Limited Duty Rule because it is outmoded and does not reflect the changes that have taken place in baseball since its creation in 1913. Grow & Flagel, *The Faulty Law and Economics of the “Baseball Rule,” supra*, at 67. While the Limited Duty Rule was modified in 1932, it has largely remained the same ever since. *Id.* at 71–74. Baseball, on the other hand, has evolved substantially. *See id.* at 85–98. Over the last quarter century, numerous changes to baseball have made it more likely for spectators to be “injured by foul balls.” *Id.* Players are now stronger than they were in the Twentieth Century, suggesting that pitchers can “throw[] harder” and batters can “swing their bats both faster and harder than before.” *Id.* at 92–93. Accordingly, baseballs “likely often fly further and more quickly into the stands.” *Id.* at 91–92 (stating that “anecdotal data suggest that baseballs enter the stands traveling at speeds of 100 to 110 miles per hour on a relatively frequent basis”).

Additionally, the environment at baseball games has changed. Due to changes in modern stadium construction, spectators sit significantly closer to the field than they previously did, putting them at greater risk. *Id.* at 86, 90 (stating that because fans now sit closer to the field, they have “less time to react to a ball hit in their direction than would have been the case around the time that the Baseball Rule was first established”). Fanfare is also now an important aspect of many baseball games, and stadiums create distractions for spectators. *Id.* at 97–98. Many stadiums now have WiFi for spectators to use. *Id.* at 98. Stadiums also have scoreboards on

which they show “a never-ending stream of statistics, advertisements, and replays.” *Id.* at 97. Many baseball teams have mascots that engage with spectators both during play and during breaks. *Id.*; see also *Lowe v. Cal. League of Pro. Baseball*, 65 Cal. Rptr. 2d 105 (Cal. Ct. App. 1997) (holding that “the antics of the mascot are not an essential or integral part of the playing of a baseball game”). And, as occurred at the Hawkins Tigers game on the night Ms. Byers was injured, some stadiums host events that draw spectators, such as fireworks shows.

Acknowledging these changes, in 2019, Major League Baseball stated its intent to “expand the protective netting in their stadiums ‘substantially beyond the end of the dugout’” in each of the stadiums in which the thirty major league teams play. *Summer J. v. U.S. Baseball Fed’n*, 45 Cal. App. 5th 261 (Cal. Dist. Ct. App. 2020), *modified and reh’g denied*, *Summer J. v. U.S. Baseball Fed’n*, Nos. B282414, B285029, 2020 Cal. App. LEXIS 193, at *2 (Ct. App. Mar. 9, 2020), *review denied* (*Summer J. v. U.S. Baseball Fed’n*, No. S261473, 2020 Cal. LEXIS 4103 (June 17, 2020)). Minor league stadiums have also followed this initiative by expanding netting in stadiums. *Id.* These changes further reflect that baseball has evolved over time, and the risk of harm is now substantially greater than it was in 1932. Accordingly, the previous standards, including the Limited Duty Rule, do not properly reflect the risk of harm and are no longer sufficient to protect baseball spectators from harm.

C. **The legislature, rather than the judiciary, should determine whether adoption of the Limited Duty Rule is appropriate because the legislature has more resources to determine if the Rule is necessary.**

The Maryland Court of Appeals would not adopt the Limited Duty Rule because the legislature is better equipped to determine whether the Rule is proper. Unlike the courts, the legislature “has the resources for the research, study and proper formulation of broad public policy.” See *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 379 (Idaho 2013) (quoting *Anstine*

v. Hawkins, 447 P.2d 677, 679 (Idaho 1968)). If a special rule is to be crafted, it should be based on “broader statistical evidence regarding the prevalence of foul ball injuries in general, and . . . how varying stadium designs might prevent them.” *Id.* Legislatures, rather than courts, serve this particular role of crafting rules. *See South Shore Baseball*, 11 N.E.3d at 909 (quoting Charles Fried, *Balls and Strikes*, 61 Emory L.J. 641, 642 (2012) (“Judges are like umpires. Umpires don’t make the rules, they apply them.”)). Here, although the Court may have anecdotal evidence of foul balls flying into the concourse from the Hawkins Tigers, the Court does not have statistical evidence regarding the frequency of baseball injuries at the Stadium in particular or at other baseball stadiums in Maryland.

Furthermore, courts in other jurisdictions have already left the adoption of the Limited Duty Rule to the legislature. *See, e.g., id.; Alwin v. St. Paul Saints Baseball Club, Inc.*, 672 N.W.2d 570, 754 (Minn. Ct. App. 2003) (deciding a case involving a foul ball injury based on assumption of the risk because the legislature, rather than the judiciary, should have the task of modifying such “a well established rule”); New Jersey Baseball Spectator Safety Act of 2006, N.J. Stat. Ann. § 2A:53A-43, *as recognized in Sciarrotta v. Glob. Spectrum*, 944 A.2d 630 (N.J. 2008) (overturning the Supreme Court of New Jersey’s refusal to adopt the Limited Duty Rule).

Moreover, the Maryland Court of Appeals has recently deferred to the legislature when deciding cases involving the adoption or abrogation of tort law principles. *See Coleman*, 69 A.3d at 1157 (declining to abrogate the defense of contributory negligence, noting that the Maryland legislature has repeatedly voted against bills that would eliminate contributory negligence in Maryland). In fact, the Maryland Court of Appeals may have already suggested that the legislature, rather than the judiciary, should adopt the Limited Duty Rule. The District Court submitted the question of whether the Maryland would accept the Limited Duty Rule to the

Maryland Court of Appeals for certification. However, the Court of Appeals denied this request for certification, suggesting that the court may want to leave this issue to the legislature. Accordingly, the Court of Appeals of Maryland would defer to the legislature to create the Limited Duty Rule.

CONCLUSION

In sum, the Limited Duty Rule contravenes Maryland's established tort law and is based on an outdated version of baseball. Any changes to Maryland's tort law should be made by the legislature, rather than the courts. Additionally, it would be improper to shift liability from stadiums to spectators when the spectator is outside the stands, especially when the stadium has created distractions that pull the spectator's attention from the game and the stadium's architectural features allow for injury in these areas.

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 JD/LLB From **University of Virginia School
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Date of JD/LLB **May 22, 2022**

Class Rank

School does not rank

Does the law school have a Law
Review/Journal?

Yes

Law Review/Journal

No

Moot Court Experience

No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships **No**
Post-graduate Judicial Law Clerk **No**

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**This applicant has certified that all data entered in this profile and
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June 15, 2021

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
701 East Broad Street, Suite 6112
Richmond, Virginia 23219-3528

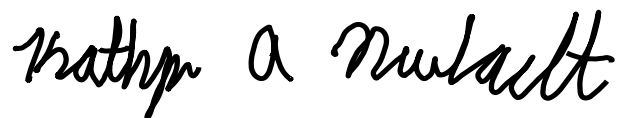
Dear Judge Hanes:

I am a student at the University of Virginia School of Law beginning my third year this fall. I am writing to apply for a clerkship in your chambers for the 2022-2024 term.

I am enclosing my resume, my law school and undergraduate transcripts, and a writing sample. You will also receive letters of recommendation Professor Camilo Sanchez and Professor Rachel Harmon. Each has said that they would be happy to speak with you directly. If you would like to reach them, Professor Sanchez's telephone number is (434) 924-7304, and Professor Harmon's phone number is (434) 924-7205. I have also included information for Monica Cliatt who was my supervisor during a previous legal internship and Professor Thomas Nachbar for whom I work as a research assistant.

Please let me know if I can provide any further information. I appreciate your consideration.

Sincerely,

A handwritten signature in black ink that reads "Kathryn A. Neuhardt". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kathryn A. Neuhardt

Kathryn A. Neuhardt

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EDUCATION

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- *Program in Law and Public Service*, Fellow
- *Justice John Paul Stephens Fellowship*, 2021 Recipient

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B.S., Film & Television (Minor: Spanish), *cum laude*, May 2017

EXPERIENCE

American Bar Association Center for Human Rights, Washington D.C.

Summer Intern, May 2021 – August 2021

Professor Thomas Nachbar, Charlottesville, VA

Research Assistant, February 2021 – August 2021

University of Virginia School of Law, International Human Rights Clinic, Charlottesville, VA

Clinical Student, August 2020 - May 2021

- Researched the right to maternal health care in international human rights tribunals
- Drafted briefs for cases before the African Commission on Human and People's Rights and the Inter-American Commission on Human Rights

Federal Public Defender for the Western District of Virginia, Roanoke, VA

Legal Intern, June 2020 - August 2020

- Drafting COVID-19 compassionate release motions
- Conducted research on duties of administrative duties of immigration law judges and prepared summary of findings for Fourth Circuit appeal
- Reviewed Spanish language discovery materials to identify relevant evidence

Eviction Legal Helpline, Charlottesville, VA

Intake Volunteer, October 2019 - August 2020

- Interviewed prospective clients to collect case information and created case files from information

Boston Red Sox, Boston, MA

Production Assistant, March 2016 - August 2019

- Edited social media, marketing, and in-stadium video content
- Received Regional Emmy nomination for short television segment made with local veterans' healthcare program

López-Li Films, Madrid, Spain

Post-production Intern, September 2015 - December 2015

- Assisted lead editor on film commissioned by a national museum including logging and transcribing interviews with authors, artists, and historians and graphics editing

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Languages: Spanish (fluent)

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SCHOOL OF LAW

Name: Kathryn Neuhardt

Date: June 09, 2021

Record ID: kan6ke

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.**Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.****FALL 2019**

| | | | | | |
|-----|------|------------------------------|---|----|---------------------|
| LAW | 6000 | Civil Procedure | 4 | B | Solum, Lawrence |
| LAW | 6002 | Contracts | 4 | B+ | Geis, George Samuel |
| LAW | 6003 | Criminal Law | 3 | B+ | Ferzan, Kimberly |
| LAW | 6004 | Legal Research and Writing I | 1 | S | Ware, Sarah Stewart |
| LAW | 6007 | Torts | 4 | B | White, George E |

SPRING 2020

| | | | | | |
|-----|------|---------------|---|----|----------------|
| LAW | 7645 | Baseball (SC) | 1 | B+ | Setear, John K |
|-----|------|---------------|---|----|----------------|

SPRING 2020

| | | | | | |
|-----|------|--------------------------------|---|----|-------------------------|
| LAW | 6001 | Constitutional Law | 4 | CR | Schauer, Frederick |
| LAW | 6107 | International Law | 3 | CR | Deeks, Ashley |
| LAW | 7088 | Law and Public Service | 3 | CR | Shin, Crystal Sue |
| LAW | 6005 | Lgl Research & Writing II (YR) | 2 | S | Ware, Sarah Stewart |
| LAW | 6006 | Property | 4 | CR | Nicoletti, Cynthia Lisa |

FALL 2020

| | | | | | |
|-----|------|--------------------------------|---|----|-----------------------------|
| LAW | 7193 | Adv Topics in Law of Police | 2 | B+ | Harmon, Rachel A |
| LAW | 6106 | Federal Income Tax | 4 | B | Hayashi, Andrew T |
| LAW | 7121 | Int'l Trade and Investment | 3 | A- | Verdier, Pierre-Hugues |
| LAW | 8638 | Intrnl Human Rts Law Clin (YR) | 3 | CR | Sanchez Leon, Nelson Camilo |
| LAW | 7071 | Professional Responsibility | 2 | B+ | Sachs, Benjamin Ryan |

SPRING 2021

| | | | | | |
|-----|------|--------------------------------|---|----|------------------|
| LAW | 9351 | RBG, Legacy, & Supreme Ct (SC) | 1 | A- | Lithwick, Dahlia |
|-----|------|--------------------------------|---|----|------------------|

SPRING 2021

| | | | | | |
|-----|------|--------------------------------|---|----|-----------------------------|
| LAW | 7024 | Banking & Financial Institutns | 3 | B+ | Kitch, Edmund W |
| LAW | 8004 | Con Law II: Speech and Press | 3 | A- | Kendrick, Leslie Carolyn |
| LAW | 6112 | Environmental Law | 3 | B | Livermore, Michael A. |
| LAW | 8639 | Intrnl Human Rts Law Clin (YR) | 3 | A | Sanchez Leon, Nelson Camilo |
| LAW | 9342 | Law of Place and Place of Law | 3 | B | Schragger, Richard C. |

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DEGREE AWARDED

Bachelor of Science

Major: Film and Television

Minor: Spanish

Cum Laude

May 21, 2017

BASIS OF ADMISSION

Westford Academy

Westford, MA

| COURSE CODE | COURSE TITLE | CREDIT | GRADE | HONOR POINTS | SEM-GPI CUM-GPA |
|--------------------------------------|------------------|--------|-----------|-----------------|--------------------|
| FALL 2013 | | | | | |
| ADMITTED to College of Communication | | | | | |
| Bachelor of Science | | | | | |
| CAS HI101 | DAWN OF EUROPE | 4.0 | A | 16.0 | |
| CAS LS307 | SPAN LIT & ARTS | 4.0 | A | 16.0 | |
| CAS WR100 | WRITING SEMINAR | 4.0 | B- | 10.8 | |
| COM CO101 | THE WRLD OF COM | 4.0 | B+ | 13.2 | 3.50 |
| | | | | | 3.50 |
| SPRING 2014 | | | | | |
| CAS MA115 | STATISTICS 1 | 4.0 | B+ | 13.2 | |
| CAS PH159 | PHIL AND FILM | 4.0 | B | 12.0 | |
| CAS WR150 | WRTG& RSRCH SEM | 4.0 | B+ | 13.2 | |
| COM CO201 | INTRO COM WRTNG | 4.0 | A- | 14.8 | |
| PDP FT100 | BASIC FIT WKT | 1.0 | P | 0.0 | 3.33 |
| | | | | | 3.41 |
| FALL 2014 | | | | | |
| CAS IR230 | INTRO INT'L POL | 4.0 | B- | 10.8 | |
| CAS MA120 | APPLIED MATH | 4.0 | B | 12.0 | |
| COM FT310 | STORYTELL FTV | 4.0 | B | 12.0 | |
| COM FT353 | PRODUCTION 1 | 4.0 | A- | 14.8 | 3.10 |
| | | | | | 3.31 |
| SPRING 2015 | | | | | |
| CAS IR290 | DRUGS & AMERICAS | 4.0 | B+ | 13.2 | |
| CAS LS350 | INTR HISP TEXTS | 4.0 | A- | 14.8 | |

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|-------------------------------|-----------------|-----|----|------|------|
| COM FT303 | UNDRSTANDING TV | 4.0 | A | 16.0 | |
| COM FT411 | SCREENWRITNG 2 | 4.0 | A | 16.0 | 3.75 |
| | | | | | 3.42 |
| SUMMER1 2015 | | | | | |
| COM FT250S | UNDRSTNDNG FILM | 4.0 | A | 16.0 | 4.00 |
| | | | | | 3.45 |
| FALL 2015 | | | | | |
| Study Abroad in Madrid, Spain | | | | | |
| CAS SP342E | SPANISH FILM | 4.0 | A | 16.0 | |
| CAS SP343E | WOMEN IN SPAIN | 4.0 | B | 12.0 | |
| CAS SP348E | SPACES OF ART | 4.0 | B+ | 13.2 | |
| COM FT493E | INTERNSHIP 1 | 2.0 | A | 8.0 | |
| COM FT494E | INTERNSHIP 2 | 2.0 | A | 8.0 | 3.58 |
| | | | | | 3.48 |
| SPRING 2016 | | | | | |
| CAS LF111 | 1ST SEM FRENCH | 4.0 | B+ | 13.2 | |
| CAS LS454 | 19&20TH C SPLIT | 4.0 | B+ | 13.2 | |
| COM FT402 | PRODUC 2-DIG | 4.0 | B | 12.0 | |
| COM FT507 | TV STUDIO PROD | 4.0 | B | 12.0 | |
| COM FT512 | WRITG EPISOD DR | 4.0 | B+ | 13.2 | 3.18 |
| | | | | | 3.42 |
| FALL 2016 | | | | | |
| CAS LF112 | 2ND SEM FRENCH | 4.0 | A- | 14.8 | |
| COM FT468 | FILM PRDCTN 3 | 4.0 | A- | 14.8 | |
| COM FT526 | DIRECTING | 4.0 | B+ | 13.2 | |
| COM FT565 | MOTION PIC EDIT | 4.0 | B+ | 13.2 | 3.50 |
| | | | | | 3.43 |
| SPRING 2017 | | | | | |
| CAS EC102 | INTRO MACRO | 4.0 | B+ | 13.2 | |
| CAS LS554 | BORGES | 4.0 | A- | 14.8 | |
| COM FT589 | ADV PROD WKSP | 4.0 | B+ | 13.2 | |
| PDP SK201 | INTERM,SKATING | 1.0 | P | 0.0 | 3.43 |
| | | | | | 3.43 |

Cumulative Credits Earned :134.0

Cumulative Grade Point Average : 3.43

ADVANCED STANDING

| COURSE | CREDITS |
|--------------------------------|---------|
| College of Communication (COM) | |
| AP - ENG LIT/COMP | 8.00 |
| AP - SPANISH LANG | 4.00 |

EVALUATION OF EXTERNAL CREDIT

College of Communication (COM)

FALL 2013 Admitted with 12.00 credits towards graduation requirements.

End of Transcript

[Contact](#)

June 14, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Kathryn Neuhardt for a clerkship.

I taught Kathryn in a seminar this past fall, Advanced Topics in the Law of the Police. The course surveyed a variety of remedies for police misconduct, including civil damages actions under Section 1983, criminal prosecution, the exclusionary rule, structural reform litigation, and more. Unfortunately, because of COVID, the course was held entirely by zoom. Still, Kathryn made consistently positive contributions to class, and wrote an interesting paper on the Defense Department's 1033 program, which offers surplus military equipment to local police departments. She also wrote a good exam in the course, applying the law to a complicated fact pattern under significant time pressure.

Kathryn is a hard worker and intellectually engaged. She worked for several years before law school, so she has the professionalism and work ethic to hit the ground running. She believes in public service, and I expect she will both enjoy clerking and contribute positively to any chambers.

I encourage you to consider her closely. Please let me know if I can be of any further assistance.

Sincerely,

Rachel Harmon
Director, Center for Criminal Justice
Class of 1957 Research Professor of Law
University of Virginia Law School
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Rachel Harmon - rharmon@law.virginia.edu - (434) 924-7205

Camilo Sanchez
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903

June 14, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to provide a recommendation for Kathryn Neuhardt in connection with her application for a judicial clerkship. In the two years that I have known Kathryn, I can confidently say that she will be an exceptional clerk, an outstanding attorney.

I have known Kathryn for more than two years. I came to know her very well when she was a student in my international human rights law clinic. It is a year-round clinic that requires students to make a commitment equivalent to six academic credits. Therefore, the constant and prolonged interaction with my students in this course allows me to get to know them very well. It is based on this extensive experience that I write a letter of unequivocal support.

In our seminar portion, Kathryn was a sharp and thoughtful contributor and continuously reflected on how human rights advocates need to do more to combat privilege blindness. As a student-advocate, her talents have really stood out. Kathryn was assigned to our most challenging case this year. The case dealt with a policy in Bolivia that denies citizens the opportunity to be excused from military service as a conscientious objector in violation of international law. Kathryn and her teammate had the challenge of synthesizing a bulk of law decisions from different systems and treaties about conscientious objection and turning that into law that we could then state in a brief to be submitted to the Inter-American Commission on Human Rights.

Kathryn proved to be a talented, resourceful, highly meticulous, and competent researcher and writer. In her final product, she analyzed all the various cases and rulings and came up with the minimum requirements that states had to abide by. I was very impressed by how her writing accurately resembled judicial drafting. Each portion of her brief was clear and free from possible misinterpretation. This careful writing and editing process took a significant amount of time and careful reading.

I was also impressed by Kathryn's teamwork. She is willing to take the lead and motivate her team members if she feels it is necessary. On the other hand, if the situation requires her to play a less visible role, Kathryn has no problem doing the legwork to ensure that the team members are not left behind.

No task is too big or small for Kathryn. While balancing her busy caseload (and the rest of her classes and other obligations), she volunteered to complete humble tasks, such as keeping track of the clinic's communications with our clients and leading the clinic's external communications strategy.

For Kathryn, a judicial clerkship represents a chance to learn about the inner workings of the legal system as a jumping-off point for entering the public sector. She is actively looking for opportunities to engage with the community and uphold justice to serve that community best.

Overall, it was a pleasure to work with Kathryn. I can recommend her to you as a clerk with confidence that she would do an excellent job and make the most of the experience. Please do not hesitate to contact me with any questions that you may have.

Sincerely,

Camilo Sanchez

Camilo Sanchez - csanchez@law.virginia.edu - (434) 924-7893

Kathryn A. Neuhardt

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WRITING SAMPLE

The following document is an excerpt from an unedited draft of a brief of amicus curiae prepared in the University of Virginia International Human Rights Law Clinic. Sections written by members of the clinic other than the applicant have been omitted. It is used with the permission of clinic director Camilo Sanchez Leon.

I. The right to be a conscientious objector is an established part of international law.

A. The United Nations recognizes conscientious objection to military service as a human right

6. The United Nations recognizes the right to conscientious objection as being created by Article 18 of the International Covenant on Civil and Political Rights (ICCPR).¹ Article 18 states that,

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”²

7. While the text of the article makes no mention of military service, General Comment 22 to Article 18 does. General Comment 22 was adopted by the UN Human Rights Committee in 1993 and clarifies the scope of Article 18. The comment states that the right to conscientious objection can be derived from Article 18 as the obligation to use lethal force could come into serious conflict with the freedom of conscience.³

Furthermore, no distinction can be made based on the nature of the belief held and discrimination against conscientious objectors is prohibited.⁴

8. The Human Rights committee has also solidified the right to conscientious objection in multiple cases. In *Yoon et al. v. Republic of Korea* the committee held that the right was based in Article 18 and applied to all State parties to the ICCPR.⁵ This position rejects the contention that only those states which have themselves recognized the right are bound by it. Rather, all states, regardless of domestic law, are required to recognize the right to conscientious objection to military service. Furthermore, the committee rejected the contention that article 8, which prohibits forced labor, has any bearing on the existence of the right to conscientious objection by stating “article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant”.⁶

9. Subsequent cases, including *Jung et al. v. Republic of Korea* and *Jeong et al. v. Republic of Korea*, reaffirmed this position⁷. Many cases involving very similar facts as the *Yoon*

¹ <https://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/ConscientiousObjection.aspx>

² International Covenant on Civil and Political Rights, Article 18

³ Comment 22 para. 11

⁴ Id.

⁵ Communications Nos. 1321/2004 and 1322/2004, Views adopted on 3 November 2006. United Nations Office of the High Commissioner on Human Rights, HR/PUB/12/1 Conscientious Objection to Military Service 7, 2012

⁶ *Yoon and Choi v Republic of Korea* (CCPR/C/88/D/1321-1322/2004 of 23 January 2007)

⁷ Other cases involving the Republic of Korea include *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea* (CCPR/C/88/D/1321-1322/2004), *Jong-nam Kim et al. v. Republic of Korea* (CCPR/C/106/D/1786/2008), *Young-kwan Kim et al. v. Republic of Korea*, and *Min-Kyu Jeong et al. v. Republic of Korea*.

case were all decided against the Republic of Korea. The state used the same or similar arguments to the ones it made in *Yoon* and the Commission rejected them every time.

10. More recently, the Human Rights Commission has sided with conscientious objectors in Turkmenistan.⁸ One of the latest plaintiffs in this line of cases was a Jehovah's Witness who was tried and convicted for failure to perform his compulsory military service.⁹ In that case, the Commission once again referred to general comment no. 22 and its previous case law to affirm the right to conscientious objection.¹⁰
11. Since then, the UN Human Rights Council has adopted multiple resolutions affirming the right to conscientious objection.¹¹ These resolutions also restated and reaffirmed the decisions of the Commission on Human Rights in the previously mentioned cases.¹² Furthermore, the Committee's Working Group on Arbitrary Detention has stated that the right is "part of the absolutely protected right to hold a belief under article 18(1) of the Covenant, which cannot be restricted by the states."¹³
12. The right to conscience is also laid out in Article 18 of the Universal Declaration of Human Rights (UDHR) which states "[e]veryone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹⁴ Conscientious objection to military service can be considered a derivative right of the UDHR using the same principals General Comment 22 applies to the ICCPR.¹⁵
- B. European human rights treaties recognize, both implicitly and explicitly, the right of conscientious objection to military service
13. Two separate treaties in Europe address the right to conscientious objection to military service, the European Convention on Human Rights (European Convention) and the Charter of Fundamental Rights of the European Union.
14. Article 9 of the European Convention establishes the freedom of thought, conscience and religion using language very similar to that of the ICCPR and UDHR.¹⁶ While the

⁸ See *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012); *Mahmud Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012); *Ahmet Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2222/2012); *Sunnet Japparow v. Turkmenistan* (CCPR/C/115/D/2223/2012); *Akmurad Nurjanov v. Turkmenistan* (CCPR/C/117/D/2225/2012 and Corr.1); *Shadurdy Uchetov v. Turkmenistan* (CCPR/C/117/D/2226/2012).

⁹ *Durdyev v. Turkmenistan* (CCPR/C/124/D/2268/2013) para. 2.1-2.7

¹⁰ *Id.* Para. 7.3

¹¹ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013; Human Rights Council resolution 36/18 (A/HRC/ RES/36/18) of 3 October 2017; Human Rights Council resolution A/HRC/41/23 (2019) of 24 May 2019.

¹² Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013.

¹³ Report of the Working Group on Arbitrary Detention (A/HRC/42/39, 16 July 2019) para. 60(b).

¹⁴ Universal Declaration of Human Rights Article 18.

¹⁵ United Nations Office of the High Commissioner on Human Rights, HR/PUB/12/1 Conscientious Objection to Military Service 12-14, 2012

¹⁶ European Convention on Human Rights, Article 9. See ICCPR Art. 18 and UDHR art. 18

European Commission on Human Rights had held the position that recognition of a right to conscientious objection was left up to the State parties to the European Convention, the Grand Chamber of the European Court of Human Rights departed from this view in *Bayatyan v. Armenia*.¹⁷ The case concerned a young Jehovah's Witness who was arrested in 2002 after refusing to report for compulsory military service. He faced criminal charges for draft evasion and was sentenced to two and a half years in prison.¹⁸

15. The Court held that Armenia had violated Article 9 of the European Convention and ordered the State to pay Bayatyan a total of 20,000 euros in non-pecuniary damages and compensation for costs and expenses.¹⁹ The Court cited multiple justifications for its decision stating that "opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to service in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of article 9."²⁰ One fact it highlighted was that, at the time of the decision, only two member of the Council of Europe had not recognized some form of a right to conscientious objection.²¹
16. The Court also makes mention of the Charter of Fundamental Rights of the European Union, which "reproduces Article 9 § 1 of the Convention almost literally," but explicitly adds recognition of the right to conscientious objection.²² The Charter applies only to the member states of the European Union, who all recognize the right.²³

III. Defining the contours of the right to conscience

17. The existing right includes a handful of minimum standards that must be observed to avoid violation of the right to conscientious objection. First, conscientious objectors have the right to, at a minimum, be moved into a non-combat role within the military. However, state practice suggests that the standard may in fact be more stringent, requiring that conscientious objectors be exempt from any participation in the military. Second, a person must be entitled to conscientious objector status even if they are not part of an organized religion, and states may not discriminate based on the nature of the objector's belief. Furthermore, the right is subject to "only such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"²⁴ due to the fact that it is derived from

¹⁷ United Nations Office of the High Commissioner on Human Rights, HR/PUB/12/1 Conscientious Objection to Military Service 15-16, 2012

¹⁸ Grand Chamber, European Court of Human Rights, *Bayatyan v. Armenia* July 2011

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Grand Chamber, European Court of Human Rights, *Bayatyan v. Armenia* July 2011. Charter of Fundamental Rights of the European Union, article 10.

²³ Grand Chamber, European Court of Human Rights, *Bayatyan v. Armenia* July 2011

²⁴ ICCPR art. 18(3)

article 18 of the ICCPR. Finally, if a state is to make an inquiry into the truth of the objector's claim, the process must be fair and impartial.

A. The objector must be exempted from service that goes against his or her beliefs, and any alternative form of service must be nonpunitive in nature

18. As a basic principle of the right to conscientious objection, the objector must be allowed to fulfill the service requirement in a way that does not conflict with his beliefs. The state has the option to simply exempt the objector entirely, but it does not need to. It is only required to make some "forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character."²⁵ These alternatives could be in non-combatant roles within the military if the objector's belief allows.²⁶ In all other circumstances there must be some other non-military forms of service depending on what is appropriate.²⁷

19. The term nonpunitive applies to both the nature and length of the alternative service to be performed. Alternative service may be of longer duration than the military service requirement it is replacing. However, the difference in duration must be "based on reasonable and objective criteria" that justifies the discrepancy such as a need for advanced training in order to perform the service.²⁸

20. According to the UN Human Rights Committee, alternative service is not of a punitive nature if it is "of real service to the community and compatible with respect for human rights."²⁹ Service outside the objector's home area paid below subsistence level or with restrictions on the objector's movement would not satisfy this requirement and is considered punitive.³⁰ The European Court of Human Rights has similarly concluded that the alternative service must be appropriate for the objector's beliefs and conscience and sufficiently separated from the military.³¹

B. No discrimination is allowed on the basis of the nature of the objector's belief

21. Furthermore, states may not discriminate based on the nature of the belief when determining the validity of a claim of conscientious objection. In 1993, the Committee on Human Rights determined that a Dutch law exempting only Jehovah's Witnesses from national service while excluding others raised issues of discrimination.³² Shortly thereafter, the Committee issued general comment No. 22 which stated that the basis for

²⁵ Commission on Human Rights resolution 1998/77; *See also* Durdyev v. Turkmenistan (CCPR/C/124/D/2268/2013).

²⁶ UN Human Rights Council resolution 24/17

²⁷ *Id.*

²⁸ *Foin v France* (Communication No. 666/1995), CCPR/C/D/666/1995, 9 November 1999.

²⁹ *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854/2008 of 19 June 2012), para. 10.4

³⁰ Human Rights Committee, Concluding Observations on the Russian Federation (CCPR/C/RUS/CO/6 of 24 November 2009) para. 23.

³¹ *European Court of Human Rights Adyan and Others v. Armenia* Application no. 75604/11, 12 January 2018

³² Communication No. 402/1990, Views of 27 July 1993

conscientious objection must extend “to all religious beliefs and other convictions, and that any alternative service for conscientious objectors be performed in a non-discriminatory manner.”³³ This part of the comment precludes the possibility of a law which exempts only those whose reasons for objection stem from organized religion.

22. The Human Rights Council has reiterated this principle outside of General Comment 22 as well. The Council issued Resolution 24/17 which makes clear that no discrimination is allowed due to religion or belief and stated that “conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives.”³⁴ This statement makes it clear that all beliefs, whether religious, ethical, or humanitarian, are on equal footing in the context of conscientious objection to military service.
23. The Office of the UN High Commissioner for Human Rights has also stated that “conscientious objector status must therefore be available for all regardless of the basis of their conscientiously held objection.”³⁵
24. Finally, this protection also means that there may be no discrimination because of when a person’s belief develops. A person who is already a member of the military may become conscientious objector whether by joining a new religion or developing a new belief while already serving in the armed forces. This principle has its basis in articles 18(1) and 18(2) of the ICCPR which respectively guarantee the right freedom to change one’s religion and prohibit coercion that prevent an individual’s ability to have or adopt a religion. In its concluding observations on Chile, the Human Rights Council noted that “conscientious objection can occur at any time, even when a person’s military service has already begun.”³⁶ UN Human Rights Council Resolution 24/17 also acknowledges that those already in the military may develop conscientious objections after joining.
25. In Europe, the Committee of Ministers of the Council of Europe recognized that both professional and conscripted members of the armed forces may leave the armed forces for reasons of conscientious after already having served for some time.³⁷ Dissenting judges in a European Court of Human Rights case have also stated that even those objectors “whose views are late in crystalizing” are still entitled to the same opportunity for conscientious objection as those who are not actively serving.³⁸

³³ General comment 22. *See also* Human Rights Council Resolution 24/17.

³⁴ Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013 and reaffirmed in Human Rights Council resolution 36/18 (A/HRC/ RES/36/18) of 3 October 2017

³⁵ Office the UN High Commissioner for Human Rights: Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards (A/HRC/41/23, 24 May 2019)

³⁶ Human Rights Committee, Concluding Observations on Chile (CCPR/C/CHL/CO/5 of 18 April 2007), para. 13.

³⁷ Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces (24 February 2010), Section H, paras 40-46.

³⁸ European Court of Human Rights *Dyagilev v Russia*, Application no. 49972/16), Joint Dissenting Opinion of Judges Pinto de Albuquerque, Keller and Schembri Orland, para. 33.

C. Restrictions on the right to conscientious objection can only be allowed in contexts where the broader right to conscience may also be restricted

26. Because the right to conscientious objection is derived from article 18 of the ICCPR, it is subject only to those limitations which are also applicable to the other rights in that article.³⁹ Specifically, allowed limitations are only those which are needed to protect public safety, order, health, morals, or the rights and freedoms of others.⁴⁰ The same is true of the right as derived from article 9 of the European Convention on Human Rights. One consequence of this is that conscientious objection may not be limited to peacetime and must be available during wartime as well.

D. If a state chooses to inquire as to the validity of a conscientious objector's belief, that inquiry must be made in a fair and impartial manner

27. Finally, states may choose to make an inquiry into the sincerity of the objector's belief, although many states choose not to.⁴¹ However, certain requirements must be met. First, the decision must be made by an independent and impartial reviewer or decision maker.⁴² The Human Rights Committee disfavors determinations made by members of the military and encourages states to utilize civilians to review claims of conscientious objection.⁴³

28. The European Court of Human Rights shared this view in *Erçep v. Turkey* where it called into question the impartiality of a military tribunal used to make determinations about the validity of conscientious objector claims. The ECHR has not always found military assessment of claims to be a fatal flaw, but in certain circumstances it has been. Even in a case where it did not prove fatal, a dissenting opinion in the case noted that military review is less independent than the civilian review used by other European states.⁴⁴

29. It should also be noted that where states violate the principles of the right to conscientious objection by not permitting objectors to abstain from military service, certain forms of punishment for failure to comply would constitute further violations.⁴⁵ Such punishments include imprisonment and the imposition of the death penalty for conscientious objectors.⁴⁶

IV. Bolivia has violated this right because it does not meet the minimum standards required by international law

³⁹ HR/PUB/12/1 Conscientious Objection to Military Service 21, 2012

⁴⁰ ICCPR article 18(3)

⁴¹ Un Human Rights Council Resolution 24/17

⁴² *Id.*

⁴³ Human Rights Committee, Concluding Observations on Israel, July 2003 (CCPR/CO/78/ISR), para. 24; Human Rights Committee, Concluding Observations on Greece, March 2005 (CCPR/CO/83/GRC), para. 15.

⁴⁴ European Court of Human Rights, *Dyagilev v Russia*, Application no. 49972/16, 10 March 2020

⁴⁵ See HR/PUB/12/1 Conscientious Objection to Military Service 33, 2012

⁴⁶ Commission on Human Rights resolution 1998/77. Commission on Human Rights resolution 2004/12. Sub-Commission for the Promotion and Protection of Human Rights, resolution 1999/4

30. Bolivia's failure to exempt conscientious objectors from military service or to provide some other non-combatant form of service is a violation of Mr. Orías's right to conscience. It was the official position of the Ministry of Defense that article 249 of the Bolivian Political Constitution does not allow for conscientious objection within the State's judicial system.⁴⁷ Such a policy, if maintained, is a violation of the right to conscience.
31. There exists a secondary question of whether the inquiry by the Ministry of Defense was fair and impartial. While there is not a firm requirement that assessment of conscientious objector claims be assessed by civilians, such a system would remove some of the potential for bias within the process and is highly recommended.
32. Third, the ruling by the Tribunal Constitucional Plurinacional that military service is not inherently contradictory to Mr. Orías's beliefs is also a violation of his rights. While it is true that there are positions within the military that are not combative in nature, the mere existence of these positions without a guarantee that Mr. Orías will not be required to perform actions that go against his beliefs constitutes a violation of his rights. Such a conclusion would effectively eliminate the right to conscientious objection in almost any instance. To comply with the right to conscience, Bolivia must, at a minimum, assure that Mr. Orías is given one of these non-combatant roles and is not required to partake in actions that go against his beliefs.
33. Due to these threshold violations, further requirements of the right to conscience are not reached. However, the State is still required to refrain from discrimination, impose only those limitations allowed by the right to conscience generally, and provide a fair and impartial process for adjudicating claims of conscientious objection.

⁴⁷ IACHR Report Np. 147/20, Petition 1384-16. Admissibility, Jose Ignacio Orías Calvo. Bolivia, June 9, 2020.

Applicant Details

First Name **Bridgette**
 Last Name **Nunez-Figueroa**
 Citizenship Status **U. S. Citizen**
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6465413232**Applicant Education**

BA/BS From **Belmont University**
 Date of BA/BS **December 2007**
 JD/LLB From **Touro College Jacob D. Fuchsberg Law Center**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=23313&yr=2009

Date of JD/LLB **May 15, 2016**

Class Rank **10%**

Law Review/
 Journal **Yes**

Journal(s) **Touro Law Review**

Moot Court
 Experience **Yes**

Moot Court
 Name(s) **PRBA National Moot Court**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Specialized Work **Prison Litigation**
Experience

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

August 22, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am currently an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and a 2016 graduate of Touro College Jacob D. Fuchsberg Law Center. I am writing to express my strong interest for a clerkship in your chambers for the 2021-2023 term.

During my time with the Law Department, I have handled over fifty cases involving allegations of false arrest, excessive force, and malicious prosecution. Furthermore, I have experience dealing with unique issues involving, among other things, First Amendment violations, and challenges to local laws and the New York City Police Department's practices and policies. I have prepared clients and expert witnesses for depositions, conducted extensive discovery, settled cases, and drafted and argued motions, all of which resulted in numerous favorable outcomes for the City of New York. In addition, I spent much of this past summer preparing for a federal trial in the Eastern District of New York defending police officers in *Hines v. City of New York, et al.*, 16-CV-6817, which resulted in a defense verdict. These experiences have prepared me to balance a complicated caseload, handle various stages of litigation, and work with a variety of clients, colleagues, supervisors, and adversaries.

I also believe I am well prepared to contribute to your chambers as a result of my academic background. While at Touro Law, my writing skills and detail-oriented nature were further developed as a Constitutional Law Notes Editor for the *Touro Law Review*, which involved supervising junior staff members and revising their notes on various constitutional law topics. Further, I communicated with various personalities to provide guidance on challenging coursework as a teaching assistant for Contracts Law. Lastly, I participated in the Puerto Rican Bar Association's Moot Court Competition, which required extensive advocating and brief writing and resulted in my team winning Best Team and Best Brief for the Region.

I have had a terrific experience with the Law Department but I am looking for a new opportunity to obtain access to a wide array of legal issues and to make a hands-on contribution to the judicial process. I am particularly interested in a clerkship with their chambers because I am considering relocating on a permanent basis to the Richmond area, and I am hoping to practice in the District upon completion of the clerkship. Moreover, I believe that my academic and professional training, combined with my passion and dedication to public service makes me a strong candidate.

Thank you for your consideration and I hope to have the opportunity to meet with you.

Sincerely,

/s/

Bridgette Nunez-Figueroa

BRIDGETTE NUNEZ-FIGUEROA

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LEGAL EXPERIENCE

The City of New York Law Department, New York, NY

Assistant Corporation Counsel, Special Federal Litigation Division

September 2016 – Present

Conduct all aspects of litigation in civil right cases brought in federal court pursuant to 42 U.S.C. § 1983 in which police officer, correction officer, or district attorney misconduct is alleged including drafting of pleadings, client interviews, motion practice, discovery, depositions, oral arguments, settlement negotiations, and trials. Conducted a jury trial before the Honorable Carol Bagley Amon in *Hines v. City of New York, et al.*, 16-CV-6817 (E.D.N.Y.) wherein a complete defense verdict was obtained. Assist and propose diversity initiatives within the Law Department as a Diversity Committee member.

United States Attorney's Office – Eastern District of New York, Central Islip, NY

Legal Intern, Criminal Division

August 2015 – December 2015

Assisted throughout various phases of case development and trial proceedings including conducting legal research and discovery in white collar crime prosecutions. Assisted in the trial preparation of *U.S.A. v. Scully*, 14-CR-208 (E.D.N.Y.) wherein the defendant was accused of importing non-FDA approved drugs for resale in the United States. Drafted pleadings and conducted legal research to assist the Civil Division.

United States Securities and Exchange Commission, New York, NY

Honors Program Intern, Office of Compliance Inspections and Examinations

June 2015 – August 2015

Prepared pre-examination materials and conducted on-site examinations of investment advisers and investment companies. Conducted legal research and writing to assist staff attorneys with identifying resolution of issues presented by proposed rules, regulations, legislation, correspondence, and reports.

Financial Industry Regulatory Authority, Jericho, NY

Legal Extern, Enforcement Division

January 2015 – May 2015

Conducted legal research and writing to assist attorneys and investigative staff to investigate and initiate enforcement actions against FINRA regulated investment firms and associated individuals. Observed on-the-record interviews and settlements. Assisted staff in preparing for investigative testimony and hearings.

Nixon Peabody LLP, New York, NY

Summer Associate

June 2014 – July 2014

Conducted legal research, and drafted motions in commercial litigation and breach of contract disputes. Researched, proposed, and orally presented environmental, social, and governance initiatives for a public company's 10-K reporting. Conducted research and surveyed "material adverse clauses" in M&A agreements for publication in a Private Equity Newsletter.

EDUCATION

Touro College Jacob D. Fuchsberg Law Center, Central Islip, NY

Juris Doctor, *magna cum laude*, May 2016

Class Rank: Top 10% *GPA:* 3.76

Honors: *Touro Law Review*, Notes Editor; Dean's List (all semesters); Touro Honors Program Member

Publications: "The Difficulty of Balancing the Doctrine of Prior Restraint with the Right of Privacy,"

Touro Law Review: Vol. 31, No. 4, Article 3

Awards: Northeastern Regional Winner - Best Team & Best Brief, PRBA National Moot Court Competition, 2015;

CALI Award for Academic Excellence in American Legal Studies Practicum

Activities: Public Interest Law Fellowship Recipient, 2015; New York City Bar Diversity Fellowship Recipient, 2014;

Black Law Student Association; Latin American Law Student Association; Teaching Assistant (Contracts)

Metropolitan College of NY, New York, NY

Master of Business Administration in Financial Services, May 2010

GPA: 3.6

Belmont University, Nashville, TN

Bachelor of Business Administration, December 2007

GPA: 3.43

Honors: Dean's List (Fall 2005)

OTHER

Bar Admissions: New York (2017); Southern District of New York (2017); Eastern District of New York (2017)

Languages: Fluent in Spanish

Bridgette Nunez-Figueroa
Touro College Jacob D. Fuchsberg Law Center
Cumulative GPA: 3.714

Fall 2013

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-------------------------------|------------|-------|--------------|----------|
| Civil Dispute Res & Procedure | | A | 2 | |
| Contracts I | | A | 3 | |
| Criminal Law I | | A- | 3 | |
| Legal Process I | | B | 3 | |
| Torts I | | A | 3 | |
| Dean's List | | | | |

Spring 2014

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-------------------------------|------------|-------|--------------|----------|
| Civil Dispute Res & Procedure | | A- | 3 | |
| Contracts II | | A+ | 3 | |
| Legal Process II | | A- | 3 | |
| Property I | | A- | 4 | |
| Torts II | | A+ | 2 | |
| Dean's List | | | | |

Fall 2014

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------------|------------|-------|--------------|----------|
| Bankruptcy Law | | B | 3 | |
| Business Organizations I | | A+ | 3 | |
| Evidence | | A | 4 | |
| Law Review Editorial Board | | CR | 2 | |
| Professional Responsibility | | A | 2 | |
| Property II | | B+ | 2 | |
| Honors Program Scholar | | | | |
| Dean's List | | | | |

Spring 2015

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------------------|------------|-------|--------------|----------|
| American Trial Courts - NY State | | A- | 4 | |
| Business Organizations II | | A- | 2 | |
| Civil Practice Externship | | P | 3 | |
| Constitutional Law | | A- | 4 | |
| Honors Trusts & Estates w/ Module | | A- | 4 | |
| Law Review - Staff | | CR | 1 | |

Honors Program Scholar
Writing Requirement

Fall 2015

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-------------------------------|------------|-------|--------------|----------|
| Drafting Commercial Documents | | A- | 2 | |
| Federal Prosecution Clinic | | A | 6 | |
| Law Review Editorial Board | | CR | 2 | |
| New York Practice | | A+ | 4 | |

Honors Program Scholar
Pro Bono Requirement
Dean's List

Spring 2016

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|----------------------------------|------------|-------|--------------|----------|
| American Legal Studies | | A | 3 | |
| American Legal Studies Practicum | | A- | 1 | |
| Criminal Procedure | | A+ | 3 | |
| Law Review Editorial Board | | CR | 2 | |
| Secured Transactions | | B | 3 | |

Honors Program Scholar
CALI Award for Academic Excellence in American Legal Studies Practicum

Grading System Description

Traditional

Bridgette Nunez-Figueroa
Belmont University
Cumulative GPA: 3.44

Fall 2004

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-------------------------------|------------|-------|--------------|----------|
| Basic Concepts of Mathematics | | B | 3 | |
| Computer Proficiency, Level I | | P | | |
| Fund of Speech Communications | | B+ | 3 | |
| Lifetime Fitness | | A | 1 | |
| Music Business Seminar | | P | | |
| Survey of Music Business | | B | 3 | |
| The Musical Experience | | A | 3 | |
| Understanding the Bible | | B | 3 | |
| Good Standing | | | | |

Spring 2005

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--------------------------------|------------|-------|--------------|----------|
| Computer Fundamentals | | A | 3 | |
| Elementary Statistics | | B | 3 | |
| First-Year Writing | | B- | 3 | |
| First-Yr. Sem: Ways of Knowing | | A | 3 | |
| Music Business Seminar | | P | | |
| Survey of Recording Technology | | B+ | 3 | |
| Good Standing | | | | |

Fall 2005

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--------------------------------|------------|-------|--------------|----------|
| Accounting Principles I | | A- | 3 | |
| Business Law I | | A | 3 | |
| Health Promotion of the Family | | B+ | 1 | |
| History of Recording Business | | A | 3 | |
| Music Business Internship Lab | | P | | |
| Music Business Seminar | | P | | |
| Principles of Macroeconomics | | A | 3 | |
| Quantitative Methods in Bus | | A | 3 | |
| The Wild West | | B | 3 | |

Good Standing
Dean's List

Spring 2006

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--------------------------------|------------|-------|--------------|----------|
| Business Finance | | B | 3 | |
| International Business | | B- | 3 | |
| Legal Issues in Music Business | | B | 3 | |
| Logic | | B+ | 3 | |
| Management Communications | | A | 3 | |
| Music Business Internship | | P | 1 | |
| Music Business Seminar | | P | | |
| Record Company Operations | | A | 3 | |

Good Standing

Spring 2007

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|----------------------------|------------|-------|--------------|----------|
| Business Ethics | | A- | 3 | |
| Introduction to Philosophy | | B+ | 3 | |
| Mass Media and Society | | B | 3 | |
| Music Business Seminar | | P | | |
| Politics of Immigration | | A- | 3 | |
| Third Year Writing | | B+ | 3 | |

Good Standing

Summer 2007

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|----------------------|------------|-------|--------------|----------|
| Critical Thinking | | B | 3 | |
| Strategic Management | | B+ | 3 | |

Good Standing

Fall 2007

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|------------------------------|------------|-------|--------------|----------|
| Artist Management | | A | 3 | |
| Entertainment Industry in NY | | A | 3 | |
| History & Gothic Imagination | | A | 3 | |
| Music Business Exit Exam | | P | | |
| Music Business Internship | | P | 3 | |
| Music Business Seminar | | P | | |

Good Standing

Grading System Description

Traditional

Bridgette Nunez-Figueroa
Metropolitan College of NY
Cumulative GPA: 3.611

Summer 2009

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|--------------------------------|------------|-------|--------------|----------|
| Financial Services Regulations | | A | 2 | |
| Managerial Accounting | | B | 2 | |
| Managerial Finance | | B+ | 3 | |
| Marketing Management | | A- | 3 | |
| Money and Banking | | A | 2 | |

Fall 2009

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|-----------------------------|------------|-------|--------------|----------|
| Bank/Financial Institutions | | B | 2 | |
| CAI:Financial Ind. Research | | A | 3 | |
| Problems-Managerial Finance | | A | 3 | |
| Risk Management | | A | 2 | |
| Securities Industry | | B+ | 2 | |

Spring 2010

| COURSE | INSTRUCTOR | GRADE | CREDIT UNITS | COMMENTS |
|------------------------------|------------|-------|--------------|----------|
| CA II: Business Plan | | A | 3 | |
| Insurance Industry | | B- | 2 | |
| International Business | | A | 2 | |
| Issues in Financial Services | | A- | 3 | |
| Real Estate Industry | | B | 2 | |

Grading System Description

Traditional

Omar J. Siddiqi, Esq.
142 Herrick Hill Road
Oneonta, New York 13820
omarjavedsiddiqi@gmail.com
(978) 994-1217

March 11, 2020

To Whom It May Concern,

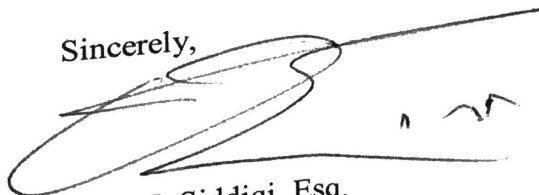
My name is Omar J. Siddiqi. I am a Senior Counsel in the Office of Corporation Counsel, Special Federal Litigation Division. I have also previously worked as an Assistant Attorney General with the New York State Office of the Attorney General. I write to highly recommend Bridgette Nunez-Figueroa for the position of Judicial Clerk.

I have known Ms. Nunez-Figueroa since January 2017, when I was assigned to be her "Cluster Leader," or immediate supervisor, when she was in her first-year at the Office of Corporation Counsel. Ms. Nunez-Figueroa immediately impressed me with her confident demeanor, as well as her attention to detail, and superlative organizational and case-tracking discipline. In our practice, these are the fundamentals to a successful attorney, and Ms. Nunez-Figueroa demonstrated the highest ability in them all.

As time went on, I had the ability to observe Ms. Nunez-Figueroa in court conferences and depositions. Her ability to prepare for an appearance deeply, coupled with the mental dexterity to pivot and improvise, made her an exemplary advocate in the courtroom and in the deposition setting. Ms. Nunez-Figueroa is also a clear and convincing writer. Her motions which I reviewed demonstrated the ability to think and communicate clearly and effectively, and always demonstrated a proficiency in the relevant case-law.

In addition to having skills of the highest order as a lawyer, Ms. Nunez-Figueroa is a kind and warm-hearted person. She would make a wonderful addition to any Judge's Chambers, and I recommend her enthusiastically and without reservation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Omar J. Siddiqi', with a stylized flourish extending from the end.

Omar J. Siddiqi, Esq.



James E. Johnson
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Mary O'Flynn
Phone: (212) 356-2352
Fax: (212) 356-3509
moflynn@law.nyc.gov

February 14, 2020

To Whom It May Concern:

Re: Applicant Bridgette Nunez-Figueroa, Esq.

I am a supervising attorney in the New York City Law Department, office of James E. Johnson, Corporation Counsel of the City of New York. I write this letter on behalf of Bridgette Nunez-Figueroa a candidate for a Federal judicial clerkship. Over the past three years I have had the privilege and opportunity to directly supervise Ms. Nunez-Figueroa on a wide array of federal civil rights cases brought against the City of New York. The quality of her work and her professional dedication may her an excellent candidate for a Federal judicial clerkship.

Ms. Nunez-Figueroa is extremely well organized and has skillfully handled a complex caseload of federal matters. She conducts thorough legal research, negotiates settlements, conducts discovery including document production and depositions, interviews clients and witnesses, makes court appearances and has, at this juncture, taken one case to trial resulting in a verdict in favor of the City.

Ms. Nunez-Figueroa has also drafted a number of substantial summary judgment motions, several of which included a large record of testimony and documents which she appropriately organized and marshaled for the motions. Her legal arguments are organized, sound, well-supported and well-reasoned. Her written work is of the highest quality. When appearing in Court she is always professional, composed and well-prepared.

On a personal note, Ms. Nunez-Figueroa is a pleasure to work with. She treats all of her colleagues, clients and adversaries with respect. She maintains a calm demeanor in even the most stressful situations and can often diffuse challenging circumstances with humor. She is always professional and is an excellent advocate. By way of example, after defending a high ranking member of a client agency in a 30(b)(6) deposition, the client agency complimented Ms. Nunez-Figueroa not only on her excellent handling of the deposition but also noted that her pleasant demeanor and mastery of the subject matter gave the witness a great deal of confidence.

Ms. Nunez-Figueroa is a talented public servant who has much to offer. She can be counted on time and again to work tirelessly in the best defense of her clients. She maintains a stellar work-ethic and would be a great asset to the Court. I recommend her to you highly.

If I can be of any assistance, or if you require any further information, please do not hesitate to contact me at (212) 356-2352.

Respectfully submitted,



Mary O'Flynn
Senior Counsel
Special Federal Litigation

BRIDGETTE NUNEZ-FIGUEROA

579 West 215th Street, Apt. 5G, New York, NY 10034 • (646) 541-3232 • bmnfigueroa@gmail.com

Writing Sample

This writing sample is a reply memorandum of law in support of a motion for summary judgment. By way of background, plaintiff filed a civil rights lawsuit pursuant to 42 U.S.C. § 1983 against a former Human Resources Administration (“HRA”) Peace Officer and the City of New York alleging a federal claim of failure to intervene and a state law claim of negligent hiring and retention. Plaintiff alleged that the City of New York negligently hired the former HRA Peace Officer who had allegedly sexually assaulted plaintiff while she was detained for trespass. I further argued, among other things, that plaintiff’s negligent hiring claim failed because the City did not have notice of the officer’s alleged propensity to commit sexual assault.

The first draft was submitted to two supervising attorneys, and underwent one round of edits, through which I was given minimal feedback with minimal grammatical or typographical edits. The final draft was filed on the docket. I ask that this document be used only for evaluating my candidacy and for no other purpose.

PRELIMINARY STATEMENT

On July 10, 2019, defendants City of New York and Peace Officer Annette Vasquez (collectively “City defendants”) moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff opposes defendants’ motion, but she still fails to show that there is any genuine issue of material fact that would allow this case to survive summary judgment. City defendants now submit this reply memorandum of law, and respectfully request that, in addition to the grounds set forth in City defendants’ original Memorandum of Law in Support of their Motion for Summary Judgment, the Court grant summary judgment in their favor.

ARGUMENT

I. PLAINTIFF FAILS TO CREATE A TRIABLE ISSUE OF FACT BECAUSE SOME OF HER RESPONSES TO DEFENDANTS’ 56.1 STATEMENT ARE INSUFFICIENT

Through her opposition, plaintiff insists there are a number of material issues of fact that preclude summary judgment. In particular, plaintiff attempts to dispute as to whether, *inter alia*: i) Jones-Alexis had discretion in her position as Investigator for the Department of Citywide Administrative Services (“DCAS”); ii) Jones-Alexis became aware that Lugo misstated the facts of his arrest in Section X of his application; and iii) after a review of his file in its entirety, she deemed Lugo “qualified for consideration” for the position of Special Officer factoring in the misrepresentation related to Lugo’s May 2008 Arrest and that he was ultimately convicted of disorderly conduct related to that arrest. See Plaintiff’s Response to City Defendants’ Local Rule 56.1 Statement, at ¶¶ 11, 13-14, 16, 24-25, 37, 39-40, 42, 54, 58, 78, 89. For the reasons that follow, there is no actual dispute precluding summary judgment on these claims.

First, many of plaintiff’s responses to City defendants’ Statement Pursuant to Local Civil Rule 56.1 are inadequate, and for this reason a number of the facts should be deemed admitted.

Under Local Civil Rule 56.1, plaintiff was required to submit a counter-statement disputing each fact presented by City defendants to which plaintiff is disputing, as well as any facts she believes are undisputed, in opposing City defendants' motion. Local Civil Rule 56.1(b). In addition, "[e]ach numbered paragraph in the statement of material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party." Local Civil Rule 56.1(c); Feldman v. Sanders Legal Group, 914 F. Supp. 2d 595, 597 n.2 (S.D.N.Y. 2012) (Ramos, J.). Further, "the nonmoving party may not rest upon mere conclusory allegations or denials, but must set forth 'concrete particulars' showing that a trial is needed." Vassallo v. Lando, 591 F. Supp. 2d 172, 183 (E.D.N.Y. 2008); Sethi v. Narod, 12 F. Supp. 3d 505, 540 n. 17 (E.D.N.Y. 2014) (collecting cases). Therefore, Local Civil 56.1(d) requires that each paragraph under subsections (a) or (b) must be followed by a citation to admissible evidence.

In opposing the 56.1 Statement, plaintiff fails to meet the requirements of Local Civil Rule 56.1. In some paragraphs, plaintiff denies the paragraph citing to evidence not supported by the record (paragraph numbers 11, 13-14, 16, 24-25, 37, 39-40, 42, 54, 58, 78, 89). These responses violate the local rule. Denying the paragraph without evidentiary support are tacit admissions by plaintiff that there is no evidence disputing those paragraphs.

Since plaintiff has failed to specifically controvert the facts in the paragraphs listed above in defendants' Statement Pursuant to Local Rule 56.1, those facts should be deemed admitted for purposes of the motion. Giannullo v. City of New York, 322 F.3d 139, 140 (2d Cir. 2003) ("If the opposing party . . . fails to controvert a fact so set forth in the moving party's Rule 56.1 statement, that fact will be deemed admitted.") (citation omitted). A party's failure to comply

with the requirements of Local Rule 56.1(b) . . . is not merely a technicality, but a fatal omission that leads to and often requires dismissal of claims. Giannullo, 332 F.3d at 140.

Further, plaintiff attempts to create an issue of fact by cherry picking certain facts from Jones-Alexis and Freeman’s testimony, and disregarding others, to create a hybrid version of facts in an attempt to defeat summary judgment. Berk v. St. Vincent’s Hosp. & Med. Ctr., 380 F. Supp. 2d 334, 345-346 (S.D.N.Y. 2005) (rejecting “a pick and choose ‘one from column A and one from column B’ Chinese menu approach to summary judgment review”); see also Krynski v. Chase, 707 F. Supp. 2d 318, 322 (E.D.N.Y. 2009) (“The fact that opposing parties assert competing versions of the same event is not in itself sufficient to preclude summary judgment.”). Thus, plaintiff’s attempt to create a material dispute of fact by offering limited portions of Jones-Alexis and Freeman’s testimony is improper.

II. SUMMARY JUDGMENT SHOULD BE GRANTED ON PLAINTIFF’S CIVIL CONSPIRACY CLAIM

Plaintiff pled a 42 U.S.C. § 1985(3) conspiracy claim in her Second Amended Complaint, which, in addition to the elements of a § 1983 conspiracy claim, required that plaintiff prove that the conspiracy was “motivated by some racial or perhaps class-based, invidious discriminatory animus.” Villa v. City of New York, No. 11 Civ. 1669 (RJS) (AJP), 2013 U.S. Dist. LEXIS 49830, at *22-23 (S.D.N.Y. Mar. 14, 2013) (quoting Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1088 (2d Cir. 1993) (per curiam)). However, after the close of fact discovery and after having had the benefit of reviewing City defendants’ motion papers, plaintiff realized that her § 1985(3) claim utterly failed as the record was devoid of any evidence that the conspiracy was motivated by her membership in a protective class. Therefore, in a last ditch effort to save her civil conspiracy claim against Vasquez, plaintiff requested and was permitted

to amend her Second Amended Complaint to simply change the civil conspiracy statute from § 1985(3) to § 1983. See Docket Entry No. 94.

Incredibly, plaintiff now argues that City defendants failed to amend their already-filed summary judgment motion seeking dismissal of the newly substituted § 1983 conspiracy claim, and therefore the cause of action is deemed unchallenged. See Plaintiff’s Memorandum of Law in Opposition to City Defendants’ Motion for Summary Judgment (“Pl’s Opp.”), at ¶ 3. However, as conceded by plaintiff in her July 29, 2019 letter, the main difference between the civil conspiracy statutes is that in a § 1985 conspiracy claim, “the plaintiff must show that the conspiracy was motivated by the plaintiff’s membership in a required class. This element is not required for a section 1983 conspiracy.” See Docket Entry No. 91, at p. 2. Therefore, rather than amend their initial motion papers, which fully argued that plaintiff’s civil conspiracy claim failed as a matter of law, City defendants assert that—whether 1985(3) or 1983—plaintiff’s civil conspiracy claim still fails regardless of plaintiff’s ability to establish that her civil rights were violated as a result of her membership in a required class.

Specifically, in her opposition papers, plaintiff argues that “[a]dmissions of Officer Vasquez conclusively establish that she conspired with Lugo to deny the plaintiff access to the courts by attempting to cover-up Lugo’s criminal behavior.” Pl’s Opp., at ¶ 3. Even assuming that this bare assertion was admissible evidence that the Court could consider—which it is not—this is not enough to satisfy plaintiff’s civil conspiracy claim. There is no dispute that Vasquez had no knowledge that Lugo had allegedly sexually assaulted plaintiff or that he even intended to, that at all times when Vasquez either entered or left the detention room, plaintiff was present with Lugo and a FJC Security Guard, and that plaintiff never told Vasquez that she had been sexually assaulted by Lugo. See Pl’s Response to Defs’ 56.1, at ¶¶ 85, 89, 91, 93, 104.

Further, it is undisputed that despite being directed to re-write a new incident report to show that Lugo was “never alone” with plaintiff, she did not do so. Id. at ¶¶ 102-105. Rather, as a newly hired peace officer, Vasquez was simply following her supervisor’s direction in discarding and re-writing a new incident report that accurately provided what she witnessed when she entered the security room for a third time. Id. at ¶¶ 105, 108. Put simply, Vasquez could not have helped Lugo “cover up” the alleged sexual assault on plaintiff that she had no knowledge of. Lastly, as Vasquez and Lugo were both employees of a single organization—HRA—plaintiff fails to adduce any evidence that Vasquez was motivated by a personal stake to deprive plaintiff of her constitutional rights. See Vasquez Dep., Nunez-Figueroa Reply Decl., Ex. X, at 99:24-100:5 (Q: Were you also trying to help Lugo out? A: No. Q: Were you trying to help yourself out? A: No.). Therefore, plaintiff’s § 1983 conspiracy claim is not even actionable.

III. PLAINTIFF HAS FAILED TO RAISE AN ISSUE OF FACT AS TO THE CITY’S ENTITLEMENT TO SUMMARY JUDGMENT ON THE DEFENSE OF GOVERNMENTAL IMMUNITY

The City remains entitled to summary judgment on its defense of governmental immunity, and plaintiff has wholly failed to raise an issue of fact in this regard. First, plaintiff argues that Jones-Alexis¹ did not have discretion to determine Lugo as “qualified for consideration” and in support maintains that she was obligated to place him in the “qualified for

¹ City defendants also maintain HRA Assistant Deputy Commissioner Freeman had discretion to hire Lugo for the position of Special Officer and he utilized his discretion to do so because: i) it is immaterial that Freeman did not have the opportunity to specifically factor Lugo’s misstatement into his personal decision to hire Lugo because the misstatement had already been discovered and taken into account by Jones-Alexis and her supervisor in DCAS before Lugo was placed on the civil service hiring list and his HRA application made its way to Freeman; and ii) Freeman testified that, in hiring a Special Officer candidate, he was only concerned with prior convictions because “anything can be alleged at a time of arrest.” Defs’ 56.1, at ¶ 106. Therefore, his exercise of discretion in deciding to hire Lugo would have only taken into the account his disorderly conduct conviction relating to his May 2008 arrest—not the arrest charges for assault in the third degree, harassment, and resisting arrest. Accordingly, Freeman’s decision to hire Lugo despite his conviction record undisputedly involved the exercise of discretion and his decision to hire Lugo must shield the City from any liability stemming from this decision. See Mon, 78 N.Y.2d at 313.

consideration” category, that she was not aware that he had lied about the facts of his May 2008 arrest, and she herself conceded that she did not have discretion in her position as an investigator for DCAS. Pl’s Opp., at ¶¶ 18, 21, 23. However, these assertions are unsupported by the record and are simply misrepresentations of Jones-Alexis’ testimony. See City Defendants’ Objections to Plaintiff’s Rule 56.1 Response, at ¶¶ 14, 39. Jones-Alexis was not obligated to place Lugo in the “qualified for consideration” category—she had a choice. After reviewing his file in its entirety and in her discretion, Jones-Alexis could have deemed Lugo qualified or disqualified him altogether for the position of Special Officer. See City Defendants’ Rule 56.1 Statement (“Defs’ 56.1”), at ¶ 14. Further, Jones-Alexis did not state that she never became aware that Lugo had lied in his application. Rather, when Jones-Alexis was initially asked, she stated that she **could not remember** if she came to that conclusion, and after being walked through the details of Lugo’s application file, Jones-Alexis repeatedly testified that she did become aware of Lugo’s misstatement in the course of processing his application. See Defs’ 56.1, at ¶¶ 92-94.

Second, plaintiff attempts to continuously distort the record by arguing that, even if she did have discretion—which she did—Jones-Alexis did not exercise that discretion because she never came to the conclusion that Lugo had lied on his DCAS application, never followed up on the NYPD records she requested, and never followed-up on the assault allegation that Jones-Alexis says she was aware of. Pl’s Opp., at ¶¶ 25, 31. Further, plaintiff alleges that Jones-Alexis never made a note in Lugo’s file regarding the discrepancy and never noted whether she discussed the discrepancy with her supervisor. Id. at ¶ 31.

However, Jones-Alexis repeatedly testified that she had become aware that Lugo had lied on his DCAS application after comparing the allegations of the criminal court complaint with Section X of Lugo’s DCAS application form, in which he indicated that he was arrested for

disorderly conduct. Defs' 56.1, at ¶ 39; see also Jones-Alexis Dep., Nunez-Figueroa Decl., Ex. D, at 83:23-84:5, 85:2-8, 111:20-112:8. Further, that Jones-Alexis did not receive a response from the NYPD regarding the details of Lugo's May 2008 arrest is of no consequence since Jones-Alexis did receive the criminal court complaint containing the charges and the facts of the arrest based on the allegations that Lugo struck his ex-girlfriend, which was then compared with Section X of the DCAS application. Defs' 56.1, at ¶¶ 11-12, 34-37. Lastly, Jones-Alexis testified that it was not the practice of DCAS to make notations to the file regarding any discrepancies found in a candidate's application nor was it a practice to notate whether a conversation was had with her supervisor. Id. at ¶ 40. However, Jones-Alexis would have discussed Lugo's misstatement in Section of X of his DCAS application with her supervisor and her supervisor would have been responsible for reviewing her recommendation. Id. at ¶ 13, 16, 40, 43.

Therefore, in the light most favorable to plaintiff, the evidentiary record demonstrates that Jones-Alexis exercised considerable discretion in her position, and in particular with respect to her decision to recommend that Lugo's application move forward in the pre-hiring process despite his criminal history and his misstatement. This exercise of discretion entitles the City to governmental immunity for the hiring of Lugo.² See Mon, 78 N.Y.2d at 313.

² Plaintiff also unsuccessfully attempts to distinguish Jones-Alexis's activities from those of Officer Kelly's in Mon by claiming that "there are ample questions of fact whether Jones-Alexis found everything she should have . . . there were substantial omissions in what was sent to Mr. Freeman for consideration." Pl's Opp., at ¶ 39-41. However, as set forth in City defendants' original motion papers, this argument is undermined by Jones-Alexis testimony that she was aware of Lugo's misstatement on his job application. Further, Jones-Alexis testified multiple times that she became aware of Lugo's misstatement in the process of conducting his background investigation, and that she discussed this issue with her supervisor. Defs' 56.1, at ¶¶ 92-94. Moreover, a misstatement or omission on a DCAS employment application does not automatically disqualify an applicant from further consideration. Id. at ¶ 66. The application form states: "Any false statements made herein can subject you to disqualification from employment even following your appointment and/or from any future employment, as well as criminal prosecution which can result in a conviction of a misdemeanor, incarceration of up to one year, and/or a fine up to \$1000." See Lugo DCAS File annexed to the Nunez-Figueroa Declaration as Exhibit H, at DEF1429 (emphasis added).

Moreover, plaintiff fails to demonstrate why summary judgment is inappropriate here on plaintiff's negligent supervision claim. Plaintiff argues that the City did not exercise discretion in retaining Lugo because a review of the documents related to allegations of excessive force did not reveal any discretion was used. Pl's Opp., at ¶ 11. The documents simply provide that the excessive force allegations were not substantiated. Id. Plaintiff is wrong.

Lugo's employment history contained three allegations of excessive force during the course of effectuating arrests, which were reported on March 6, 2015, March 15, 2017, and April 14, 2017. See Defs' 56.1, at ¶¶ 58, 61, 62. These "documents" are not merely summaries or indices—they are the underlying files for each of the complaints, which span a significant amount of pages and demonstrate an in-depth investigative process by the Investigations Division of HRA of each complaint more than establishing the discretion employed by the assigned investigator. See Complaint 1, Nunez-Figueroa Decl., Ex. M; Complaint 2, Nunez-Figueroa Decl., Ex. N; Complaint 3, Nunez-Figueroa Decl., Ex. O. Further, because only post-hire allegations are relevant to negligent supervision, these allegations were under investigation at the time of Lugo's alleged sexual assault of plaintiff on May 17, 2017, and were all deemed unsubstantiated after the incident. Indeed, it is well established that the decision to retain and supervise Lugo while the investigation of these unsubstantiated allegations were pending both represent an exercise of the City's discretion. See Gauthier v. Town of Bethlehem, 91-CV-628, 1993 U.S. Dist. LEXIS 16655, at *43 (N.D.N.Y. Nov. 24, 1993) (municipality entitled to immunity for discretionary decision to retain officer despite complaints filed against him). Therefore, the City is entitled to governmental immunity on plaintiff's negligent supervision claim.

A. The City Did Not Have Notice of Lugo's Alleged Propensity to Commit Sexual Assault

As an initial matter, plaintiff attempts to argue that Assistant Deputy Commissioner Freeman “admitted the City’s negligence in their investigation” to support her negligent hiring claim. Pl’s Opp., at ¶¶ 2, 58. However, plaintiff once more mischaracterizes Freeman’s testimony as a spokesperson for defendant City. Freeman is neither a defendant in this action nor is he a 30(b)(6) witness charged with the authority to speak on behalf of the City. Indeed, his testimony regarding the actions of other City employees merely represents his personal perspective; therefore, plaintiff’s assertion that “the City” admitted to negligently hiring Lugo is false.

Plaintiff further argues that the allegation that Lugo’s struck his ex-girlfriend on one occasion in 2008 should have put the City on notice that Lugo, if hired, would nearly ten years later sexually assault plaintiff. Pl’s Opp., at ¶¶ 61-62, 68. However, plaintiff can point to no evidence that the City should have been aware of a propensity by Lugo to engage in sexual assault. Indeed, not only was Lugo’s May 2008 arrest not sufficiently similar to what happened to plaintiff to give the City notice of the potential harm she suffered but the alleged negligent act of hiring Lugo almost ten years before this incident was too remote in time to be a legal cause. See Williams v. State of New York, 18 N.Y.3d 981,984 (2012).

Furthermore, contrary to plaintiff’s assertion that notice of specific sexual assaultive behavior is not required, case law in conjunction with general torts principles of foreseeability support narrowly construing the notice requirement. See e.g., Soba v. New York City Housing Auth., No. 11-CV-7430 (NRB), 2013 U.S. Dist. LEXIS 95764, at *7-9, 30 (S.D.N.Y. Jul. 9, 2013) (holding that plaintiff “has not offered any evidence demonstrating that NYCHA had actual or constructive knowledge of any propensity on Valentin’s part to commit an act of sexual

aggression. . . . Accordingly, plaintiff has failed to raise a triable issue of as to whether NYCHA knew, or should have known, that Valentin was ‘unfit’ to exterminate apartments on account of his alleged proclivity for sexual assault.”); Yalcin v. Children’s Vill., 331 F. Supp. 2d 170, 176-77 (S.D.N.Y. 2004) (holding that inappropriate sexual touching committed by an employee was “not reasonably foreseeable” by the employer, invoking tort liability standards set forth by the First Department, to wit: “[A] mere possibility of improper conduct is insufficient to impose liability since, historically liability for negligence has been determined by what is **probable**, not merely by what is possible”) (citing N. X. v. Cabrini Med. Ctr., 280 A.D.2d 34, 40-41 (1st Dept. 2001) (emphasis added); Taylor v. United Parcel Serv., Inc., 72 A.D.3d 573, 573 (1st Dept 2010) (holding that a plaintiff’s negligent hiring claim “was properly dismissed” where defendant UPS established that no evidence existed at the time of the employee’s hire, “to suggest that he had a propensity to commit sexual assaults.”).

In support, plaintiff relies on Chichester v. Wallace, 150 A.D.3d 1073, 1075 (2d Dept. 2017), which, upon information and belief, stands alone and its holding is contradicted by numerous other cases. See Chichester, 150 A.D.3d at 1075 (holding that a general unfitness for the job was enough to satisfy the propensity element” for a sexual assault). But see, e.g., Doe v. E. Irondequoit Cent. Sch. Dist., No. 16-CV-6594 (CJS), 2018 U.S. Dist. LEXIS 76798, at *84-85 (W.D.N.Y. May 7, 2018) (holding that the fact that a school bus driver had a prior conviction for Endangering the Welfare of a Child was not specific enough to provide sufficient notice to his employer that the bus driver had a propensity to commit sexual assault against a child).

Accordingly, because plaintiff can point to no evidence that the City should have been aware of a propensity by Lugo to engage in sexual assault, City defendants are entitled to summary judgment on plaintiff’s negligent hiring/supervision claim.

Applicant Details

| | |
|----------------------|--|
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| Last Name | O'Connell |
| Citizenship Status | U. S. Citizen |
| Email Address | dpoconnell@law.gwu.edu |
| Address | <div> <div>Address</div> <div> <div>Street</div> <div>300 Massachusetts Avenue NW</div> <div>City</div> <div>Washington</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20001</div> <div>Country</div> <div>United States</div> </div> </div> |
| Contact Phone Number | 5208343003 |

Applicant Education

| | |
|-----------------------|---|
| BA/BS From | University of Arizona |
| Date of BA/BS | May 2018 |
| JD/LLB From | The George Washington University Law School |
| | https://www.law.gwu.edu/ |
| Date of JD/LLB | May 16, 2021 |
| Class Rank | I am not ranked |
| Law Review/Journal | Yes |
| Journal(s) | Energy and Environmental Law |
| Moot Court Experience | No |

Bar Admission

Prior Judicial Experience

| | |
|--------------------------------------|----|
| Judicial Internships/ Externships | No |
|--------------------------------------|----|

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

DEVIN O'CONNELL

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May 1st, 2022

The Honorable Elizabeth W. Hanes
United States District Court for the Eastern District of Virginia
701 E. Broad Street
Richmond, VA 23219

Dear Judge Hanes,

I am a law clerk for the Honorable James A. Bonifant, Administrative Judge of the Circuit Court for Montgomery County, Maryland, writing to express my interest in the law clerk position for the upcoming term. As my resume demonstrates, I have had several opportunities to serve the public through my work at the court, and various government agencies. In addition, my strong academic credentials, and relevant work experience as Judge Bonifant's law clerk have prepared me to effectively serve as your law clerk.

Through my work experience I developed excellent legal research, analysis, and writing skills. As a law clerk for Judge Bonifant, I draft court orders and opinions in criminal, family, and civil cases, such as commitment orders, plea contracts, determinations on habeas petitions, and a denial of post-conviction relief to a defendant in a second-degree murder case. I advise Judge Bonifant on complex legal issues, such as whether the Court may grant the plaintiff in a contested custody case the authority to acquire passports for her minor children, and the requirements for an incarcerated petitioner to obtain *coram nobis* relief. I also compose bench memoranda for the Judge containing legally significant facts, statutes and rules in preparation for first degree murder, and second degree rape trials.

As a law clerk with the U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance, Water Enforcement Division (WED), I assisted attorneys preparing for enforcement proceedings by researching and synthesizing federal case law and regulations concerning statutes, such as the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA). I also drafted critical documents, such as a consent decree in a negotiated settlement and a model information request form for use by EPA regional administrators to enforce stormwater compliance measures.

In other past roles I worked as a research assistant for administrative law professor Robert Glicksman, where I researched, and analyzed secondary sources to support his thesis that structural reforms to the allocation of regulatory authority would increase agency efficiency and effectiveness. I also assisted with the adjudication of employment discrimination cases as a litigation law clerk with the District of Columbia Office of Human Rights by drafting agency determinations of unlawful discrimination, and motions to dismiss for cases under the District of Columbia Human Rights Act.

My organizational, leadership, and communication skills will also allow me to work effectively as your law clerk. As a senior production, and notes editor of the *Journal of Energy and Environmental Law*, I collaborated with other members of the senior editorial board to accelerate the editing process and meet production goals delayed by COVID-19, and I provided substantial written and oral feedback to members across three article drafts on matters such as the structure of legal argumentation in scholarly writing and the proper substantiation of source material.

I am excited about this opportunity, and believe the combination of my educational training and work experience make me a strong candidate for this position. Thank you for your time and consideration.

Respectfully,
Devin O'Connell

DEVIN O'CONNELL, Esq.

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EDUCATION

| | |
|---|-------------------------|
| The George Washington University Law School | Washington, D.C. |
| J.D.; GPA: 3.161 | May 2021 |
| <ul style="list-style-type: none"> <u>Journal</u>: <i>Energy and Environmental Law</i>, Senior Production Editor; Notes Editor (2020 - 2021) <u>Activities</u>: Lambda Law (LGBTQ+ Affinity Group), Secretary (2019 - 2020) | |
| University of Arizona, College of Social and Behavioral Sciences | Tucson, AZ |
| B.A. (<i>summa cum laude</i>) in Political Science and History; GPA: 4.0 | May 2018 |
| <ul style="list-style-type: none"> <u>Honors</u>: Academic Year Highest Academic Distinction (2014 - 2018); Dean's List with Distinction (2014 - 2018) <u>Thesis</u>: <i>Unimpeachable Neutrality: A Re-Examination of American Engagement in World War One</i> | |

EXPERIENCE

| | |
|--|-------------------------|
| Circuit Court for Montgomery County, Maryland | Rockville, MD |
| <i>Law Clerk for the Honorable James A. Bonifant</i> | Jan. 2022 – Present |
| <ul style="list-style-type: none"> Draft opinions, and orders for Circuit Court Administrative Judge (equivalent to Chief Judge) in complex criminal, family, and civil cases, such as commitment orders, plea contracts, divorce judgements, and denials of post-conviction relief. Advise Judge Bonifant on important matters of Court Administration, such as the proper procedures for bail bond forfeitures, appointment of special magistrates to the Circuit Court, assignment of petitions for habeas corpus, and release processes for medically committed defendants. Research and prepare case summaries for status hearings, dispositive motion hearings, and plea hearings. Manage busy administrative docket by scheduling hearings, communicating with the parties, checking case statuses, and assisting the public with legal filings. | |
| Environmental Protection Agency, OECA, Water Enforcement Division | Washington, D.C. |
| <i>Law Clerk</i> | Sept. 2020 – Mar. 2021 |
| <ul style="list-style-type: none"> Supported EPA and DOJ enforcement actions by synthesizing federal statutory, regulatory, and case law concerning the legality of effluent discharges into waters of the United States. Strengthened a draft complaint by presenting to Department of Justice Attorneys and EPA regional counsel on whether failures to properly designate, and contain hazardous waste claims may be maintained under RCRA without testing data proving the hazardous nature of the waste. Drafted a consent decree to close a negotiated settlement with an entity discharging stormwater without a permit in violation of the CWA's NPDES Program. Constructed a model CWA Section 308 Information Request Form for use by EPA Headquarters, regional counsel, and State Departments of the Environment to ensure greater compliance with the CWA's permitting requirements for the discharge of industrial stormwater. | |
| The George Washington University Law School | Washington, D.C. |
| <i>Research Assistant, Professor Robert Glicksman</i> | Summer 2020 |
| <ul style="list-style-type: none"> Researched and analyzed articles and other secondary sources on federal agencies and regulations to support thesis that an increase in agency efficiency and effectiveness would result from changes to the structural allocation of authority among federal agencies. | |
| District of Columbia Office of Human Rights | Washington, D.C. |
| <i>Litigation Law Clerk, Office of the General Counsel</i> | May – July 2019 |
| <ul style="list-style-type: none"> Reviewed and contributed to final determinations of employment discrimination complaints for 5-attorney office, including drafting final orders on motions to dismiss and requests to reopen. Completed exhaustive review of discovery documentation and outlined legally significant facts in preparation for hearings before the D. C. Commission on Human Rights. | |

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Date Issued: 01-JUN-2021

Record of: Devin P O'Connell

Page: 1

Student Level: Law
 Admit Term: Fall 2018

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REFNUM:52563934

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 Current Major(s): Law

Degree Awarded: J D 16-MAY-2021
 Major: Law

EXPERIENTIAL REQUIREMENT MET
 WRITING REQUIREMENT MET (6664)

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|---------|--------------|------|-----|-----|
| ----- | | | | |

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2018

Law School
Law

| | | | | |
|----------|--------------------|------|----|--|
| LAW 6202 | Contracts I | 3.00 | B | |
| LAW 6206 | Torts | 4.00 | C+ | |
| LAW 6210 | Turley | | | |
| LAW 6212 | Criminal Law | 3.00 | A- | |
| LAW 6216 | Cottrol | | | |
| LAW 6216 | Civil Procedure I | 3.00 | B | |
| LAW 6216 | Morrison | | | |
| LAW 6216 | Legal Research And | 2.00 | B | |
| LAW 6216 | Writing | | | |
| LAW 6216 | Reasoner | | | |

| | | | | | |
|------|-------|---------|-------|-----|-------|
| Ehrs | 15.00 | GPA-Hrs | 15.00 | GPA | 2.956 |
| CUM | 15.00 | GPA-Hrs | 15.00 | GPA | 2.956 |

Spring 2019

Law School
Law

| | | | | |
|----------|--------------------------|------|----|--|
| LAW 6203 | Contracts II | 3.00 | B- | |
| LAW 6208 | Maggs | | | |
| LAW 6213 | Property | 4.00 | B | |
| LAW 6213 | Glicksman | | | |
| LAW 6213 | Civil Procedure II | 3.00 | B | |
| LAW 6214 | Schaffner | | | |
| LAW 6214 | Constitutional Law I | 3.00 | B | |
| LAW 6217 | Colby | | | |
| LAW 6217 | Introduction To Advocacy | 2.00 | A- | |
| LAW 6217 | Reasoner | | | |

| | | | | | |
|------|-------|---------|-------|-----|-------|
| Ehrs | 15.00 | GPA-Hrs | 15.00 | GPA | 3.022 |
| CUM | 30.00 | GPA-Hrs | 30.00 | GPA | 2.989 |

Good Standing

Summer 2019

| | | | | |
|----------|----------------------|------|----|--|
| LAW 6668 | Field Placement | 2.00 | CR | |
| LAW 6671 | Tillipman | | | |
| LAW 6671 | Government Lawyering | 2.00 | A- | |
| LAW 6671 | Braunstein | | | |

| | | | | | |
|------|-------|---------|-------|-----|-------|
| Ehrs | 4.00 | GPA-Hrs | 2.00 | GPA | 3.667 |
| CUM | 34.00 | GPA-Hrs | 32.00 | GPA | 3.031 |

***** CONTINUED ON NEXT COLUMN *****

| SUBJ NO | COURSE TITLE | CRDT | GRD | PTS |
|---------|--------------|------|-----|-----|
| ----- | | | | |

Fall 2019

Law School
Law

| | | | | |
|----------|---------------------------|------|----|--|
| LAW 6380 | Constitutional Law II | 3.00 | B | |
| LAW 6400 | Smith | | | |
| LAW 6400 | Administrative Law | 3.00 | B | |
| LAW 6430 | Pierce | | | |
| LAW 6430 | Environmental Law | 3.00 | A- | |
| LAW 6657 | Glicksman | | | |
| LAW 6657 | Energy & Environ Law | 1.00 | CR | |
| LAW 6683 | Jrnl Note | | | |
| LAW 6683 | College Of Trial Advocacy | 3.00 | B+ | |
| LAW 6871 | Saltzburg | | | |
| LAW 6871 | U.S. Foreign Relations | 2.00 | A- | |
| LAW 6871 | Law | | | |
| LAW 6871 | Matheson | | | |

| | | | | | |
|------|-------|---------|-------|-----|-------|
| Ehrs | 15.00 | GPA-Hrs | 14.00 | GPA | 3.310 |
| CUM | 49.00 | GPA-Hrs | 46.00 | GPA | 3.116 |

Good Standing

Spring 2020

| | | | | |
|----------|-----------------------|------|----|--|
| LAW 6230 | Evidence | 4.00 | CR | |
| LAW 6351 | Saltzburg | | | |
| LAW 6351 | Reading Group | 1.00 | CR | |
| LAW 6364 | White Collar Crime | 3.00 | CR | |
| LAW 6449 | Eliason | | | |
| LAW 6449 | Environmental & Toxic | 2.00 | CR | |
| LAW 6657 | Torts | | | |
| LAW 6657 | Energy & Environ Law | 1.00 | CR | |
| LAW 6870 | Jrnl Note | | | |
| LAW 6870 | National Security Law | 2.00 | CR | |
| LAW 6870 | Gavoor | | | |

| | | | | | |
|------|-------|---------|-------|-----|-------|
| Ehrs | 13.00 | GPA-Hrs | 0.00 | GPA | 0.000 |
| CUM | 62.00 | GPA-Hrs | 46.00 | GPA | 3.116 |

Good Standing

...
 DURING THE SPRING 2020 SEMESTER, A GLOBAL PANDEMIC
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***** CONTINUED ON PAGE 2 *****



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Page: 2

SUBJ NO COURSE TITLE CRDT GRD PTS

Fall 2020

LAW 6218 Prof Responsibility & Ethics 2.00 A-
 LAW 6394 Sexuality And The Law 3.00 B+
 Schaffner
 LAW 6431 Wildlife And Ecosystems 2.00 B+
 Law
 Grosko
 LAW 6444 Regulation Of Toxic 3.00 B+
 Substances
 Glicksman
 LAW 6664 Jrnl 1.00 CR
 Energy/Environmental Law
 LAW 6667 Advanced Field Placement 0.00 CR
 LAW 6668 Field Placement 2.00 CR
 Ehre 13.00 GPA-Hrs 10.00 GPA 3.400
 CUM 75.00 GPA-Hrs 56.00 GPA 3.167
 Good Standing

Spring 2021

LAW 6232 Federal Courts 4.00 CR
 Siegel
 LAW 6360 Criminal Procedure 4.00 B+
 Saltzburg
 LAW 6418 Leg Analysis & Drafting 2.00 B-
 Strokoff
 LAW 6664 Jrnl 1.00 CR
 Energy/Environmental Law
 Paddock
 LAW 6667 Advanced Field Placement 0.00 CR
 Brown
 LAW 6668 Field Placement 2.00 CR
 Tillipman
 Ehre 13.00 GPA-Hrs 6.00 GPA 3.111
 CUM 88.00 GPA-Hrs 62.00 GPA 3.161
 Good Standing

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 Earned Hrs GPA Hrs Points GPA

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 OVERALL 88.00 62.00 196.00 3.161

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EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

| | |
|--------------|--|
| 1000 to 1999 | Primarily introductory undergraduate courses. |
| 2000 to 4999 | Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work. |
| 5000 to 5999 | Special courses or part of special programs available to all students as part of ongoing curriculum innovation. |
| 6000 to 6999 | For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office. |
| 8000 to 8999 | For master's, doctoral, and professional-level students. |

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

| | |
|------------|--|
| 001 to 100 | Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit. |
| 101 to 200 | Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work. |
| 201 to 300 | Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean. |
| 301 to 400 | Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. |
| 700s | School of Business – Limited to doctoral students. The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors. |
| 801 | This number designates Dean's Seminar courses. |

The Law School

Before June 1, 1968:

| | |
|------------|---|
| 100 to 200 | Required courses for first-year students. |
| 201 to 300 | Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval. |
| 301 to 400 | Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval. |

After June 1, 1968 through Summer 2010 semester:

| | |
|------------|--|
| 201 to 299 | Required courses for J.D. candidates. |
| 300 to 499 | Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission. |
| 500 to 850 | Designed for advanced law degree students. Open to J.D. candidates only with special permission. |

School of Medicine and Health Sciences and

School of Public Health and Health Services before Fall 2010 semester:

| | |
|------------|--|
| 001 to 200 | Designed for students in undergraduate programs. |
| 201 to 800 | Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences. |

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

THE CONSORTIUM OF UNIVERSITIES OF
THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

| | | | |
|------|----------------------------------|------|--|
| AU | American University | MMU | Marymount University |
| CORC | Corcoran College of Art & Design | MV | Mount Vernon College |
| CU | Catholic University of America | NVCC | Northern Virginia Community College |
| GC | Gallaudet University | PGCC | Prince George's Community College |
| GU | Georgetown University | SEU | Southeastern University |
| GL | Georgetown Law Center | TC | Trinity Washington University |
| GMU | George Mason University | USU | Uniformed Services University of the Health Sciences |
| HU | Howard University | UDC | University of the District of Columbia |
| MC | Montgomery College | UMD | University of Maryland |

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt, CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

<http://www.gwu.edu/transcriptkey>

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Registration and Transcripts
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P.O. Box 210066
Tucson, AZ 85721-0066
ACCREDITATION
THE NORTH CENTRAL ASSOCIATION OF COLLEGES AND SCHOOLS

Name: Devin Patrick O'Connell
Student ID: 23235604
Birthdate: 12/13/1995

Page 1 of 3
Print Date: 06/23/2020
Official Academic Record

Degrees Awarded
Degree: Bachelor of Arts
Confer Date: 05/11/2018
Degree GPA: 4.000
Degree Honors: Summa Cum Laude
Plan: Major in Political Science
Sub-Plan: Foreign Affairs Emphasis
Plan: Major in History

Program: College of Soc & Behav Sci
05/05/2015 Active in Program
Major in Political Science
Foreign Affairs Emphasis
Major in History
Major in German Studies

Program: College of Soc & Behav Sci
04/05/2016 Active in Program
Major in Political Science
Foreign Affairs Emphasis
Major in History
Minor in German Studies

Beginning of Undergraduate Record

Academic Program History
Program: College of Soc & Behav Sci
06/16/2014 Active in Program
Major in Political Science

Program: College of Soc & Behav Sci
09/18/2014 Active in Program
Major in Political Science
Comparative Politics Emphasis

Program: College of Soc & Behav Sci
09/23/2014 Active in Program
Major in Political Science
Comparative Politics Emphasis
Major in History

Program: College of Soc & Behav Sci
11/06/2014 Active in Program
Major in Political Science
Comparative Politics Emphasis
Major in History
Minor in German Studies

Program: College of Soc & Behav Sci
01/26/2015 Active in Program
Major in Political Science
Foreign Affairs Emphasis
Major in History
Minor in German Studies

Program: College of Soc & Behav Sci
01/24/2018 Active in Program
Major in Political Science
Foreign Affairs Emphasis
Major in History

Engaged Learning Experience: Completed

Test Credit **Test Credits** 18.000

| | | Fall 2014 | | | |
|---|--------------------------|------------------|-------|-------|--------|
| Course | Description | AHRS | EHRS | Grade | Points |
| ANTH 150A1 | Race, Ethnicity+Am Dream | 3.000 | 3.000 | A | 12.000 |
| EAS 160A3 | Chinese Civilization | 3.000 | 3.000 | A | 12.000 |
| ENGL 109H | Adv First-Year Compositn | 3.000 | 3.000 | A | 12.000 |
| Req Designation: Honors Course | | | | | |
| GEOG 170A1 | Earth Envr:Intr Phys Geo | 3.000 | 3.000 | A | 12.000 |
| GER 101 | German I | 4.000 | 4.000 | A | 16.000 |
| Course Attrib: SUN# GER 1101 - Beginning German I | | | | | |

| | | AHRS | EHRS | QHRS | Points |
|---------------------|-------|--------|--------|--------|--------|
| Term GPA: | 4.000 | 16.000 | 16.000 | 16.000 | 64.000 |
| Transfer Term GPA | | 18.000 | 18.000 | 0.000 | 0.000 |
| Combined GPA | 4.000 | 34.000 | 34.000 | 16.000 | 64.000 |

| | | AHRS | EHRS | QHRS | Points |
|-------------------------|------------------------------|--------|--------|--------|--------|
| Cum GPA: | 4.000 | 16.000 | 16.000 | 16.000 | 64.000 |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 |
| Combined Cum GPA | 4.000 | 34.000 | 34.000 | 16.000 | 64.000 |
| Term Honor: | Dean's List With Distinction | | | | |



Alex Underwood
University Registrar



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Registration and Transcripts
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P.O. Box 210066
Tucson, AZ 85721-0066
ACCREDITATION

THE NORTH CENTRAL ASSOCIATION OF COLLEGES AND SCHOOLS

Name: Devin Patrick O'Connell
Student ID: 23235604
Birthdate: 12/13/1995

Page 2 of 3
Print Date: 06/23/2020
Official Academic Record

| Spring 2015 | | | | | | AHRS | EHRS | QHRS | Points |
|--|--------------------------------|--------|--------|--------|---------|-------------------|------------------------------|--------|--------|
| Course | Description | AHRS | EHRS | Grade | Points | | | | |
| ASTR 170B1 | The Physical Universe | 3.000 | 3.000 | A | 12.000 | Term GPA: | 4.000 | 15.000 | 15.000 |
| GEOG 220 | Our Diverse Biosphere | 3.000 | 3.000 | A | 12.000 | Transfer Term GPA | | 0.000 | 0.000 |
| GER 102 | German II | 4.000 | 4.000 | A | 16.000 | Combined GPA | 4.000 | 15.000 | 15.000 |
| Course Attrib: SUN# GER 1102 - Beginning German II | | | | | | | | | |
| MATH 100 | Prep for University-level Math | 3.000 | 3.000 | A | 12.000 | Cum GPA: | 4.000 | 53.000 | 53.000 |
| TAR 100 | Acting Gen College Std | 3.000 | 3.000 | A | 12.000 | Transfer Cum GPA | | 18.000 | 18.000 |
| | | | | | | Combined Cum GPA | 4.000 | 71.000 | 71.000 |
| | | | | | | Term Honor: | Dean's List With Distinction | | |
| | | | | | | | | | |
| Term GPA: | 4.000 | 16.000 | 16.000 | 16.000 | 64.000 | | | | |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 | | | | |
| Combined GPA | 4.000 | 16.000 | 16.000 | 16.000 | 64.000 | | | | |
| | | | | | | | | | |
| Cum GPA: | 4.000 | 32.000 | 32.000 | 32.000 | 128.000 | | | | |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 | | | | |
| Combined Cum GPA | 4.000 | 50.000 | 50.000 | 32.000 | 128.000 | | | | |
| Term Honor: Dean's List With Distinction | | | | | | | | | |
| Academic Year Highest Academic Distinction | | | | | | | | | |
| Spring 2016 | | | | | | AHRS | EHRS | QHRS | Points |
| Course | Description | AHRS | EHRS | Grade | Points | | | | |
| GER 301 | Voices Past and Present | 3.000 | 3.000 | A | 12.000 | | | | |
| HIST 403B | History of Hellenistic World | 3.000 | 3.000 | A | 12.000 | | | | |
| HIST 440 | United States: 1945 to Present | 3.000 | 3.000 | A | 12.000 | | | | |
| POL 202 | International Relations | 3.000 | 3.000 | A | 12.000 | | | | |
| Course Attrib: SUN# POS 1120 - World/Global Politics | | | | | | | | | |
| POL 204 | Comp Politics- Age of Globaliz | 3.000 | 3.000 | A | 12.000 | | | | |
| Course Attrib: SUN# POS 2204 - Comparative Politics/Government | | | | | | | | | |
| | | | | | | | | | |
| Term GPA: | 4.000 | 15.000 | 15.000 | 15.000 | 60.000 | | | | |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 | | | | |
| Combined GPA | 4.000 | 15.000 | 15.000 | 15.000 | 60.000 | | | | |
| | | | | | | | | | |
| Cum GPA: | 4.000 | 68.000 | 68.000 | 68.000 | 272.000 | | | | |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 | | | | |
| Combined Cum GPA | 4.000 | 86.000 | 86.000 | 68.000 | 272.000 | | | | |
| Term Honor: Dean's List With Distinction | | | | | | | | | |
| Academic Year Highest Academic Distinction | | | | | | | | | |
| Summer 2015 | | | | | | AHRS | EHRS | QHRS | Points |
| Course | Description | AHRS | EHRS | Grade | Points | | | | |
| GER 211-SA | Inter Intensive German | 6.000 | 6.000 | A | 24.000 | | | | |
| | | | | | | | | | |
| Term GPA: | 4.000 | 6.000 | 6.000 | 6.000 | 24.000 | | | | |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 | | | | |
| Combined GPA | 4.000 | 6.000 | 6.000 | 6.000 | 24.000 | | | | |
| | | | | | | | | | |
| Cum GPA: | 4.000 | 38.000 | 38.000 | 38.000 | 152.000 | | | | |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 | | | | |
| Combined Cum GPA | 4.000 | 56.000 | 56.000 | 38.000 | 152.000 | | | | |
| Fall 2015 | | | | | | AHRS | EHRS | QHRS | Points |
| Course | Description | AHRS | EHRS | Grade | Points | | | | |
| ECON 200 | Basic Economic Issues | 3.000 | 3.000 | A | 12.000 | | | | |
| GER 300 | Encounters In Lang+Cultr | 6.000 | 6.000 | A | 24.000 | | | | |
| MATH 112 | Col Alg Cncpts+Appls | 3.000 | 3.000 | A | 12.000 | | | | |
| Course Attrib: SUN# MAT 1151 - College Algebra | | | | | | | | | |
| POL 206 | Public Policy + Admin | 3.000 | 3.000 | A | 12.000 | | | | |
| Fall 2016 | | | | | | AHRS | EHRS | QHRS | Points |
| Course | Description | AHRS | EHRS | Grade | Points | | | | |
| CLAS 403A | History of Greece | 3.000 | 3.000 | A | 12.000 | | | | |
| GEOG 373 | Political Geography | 3.000 | 3.000 | A | 12.000 | | | | |
| GER 310 | Present German Strt+Use | 3.000 | 3.000 | A | 12.000 | | | | |
| HIST 301 | Intro Study of History | 3.000 | 3.000 | A | 12.000 | | | | |
| HIST 438 | U.S. 1918-1945: WW I/WW II | 3.000 | 3.000 | A | 12.000 | | | | |



Alex Underwood
University Registrar

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ACCREDITATION

THE NORTH CENTRAL ASSOCIATION OF COLLEGES AND SCHOOLS

Name: Devin Patrick O'Connell
Student ID: 23235604
Birthdate: 12/13/1995

Page 3 of 3
Print Date: 06/23/2020
Official Academic Record

| | | AHRS | EHRS | QHRS | Points | | | AHRS | EHRS | QHRS | Points |
|-------------------|-------|--------|--------|--------|--------|------------------|------------------------------|---------|---------|---------|---------|
| Term GPA: | 4.000 | 15.000 | 15.000 | 15.000 | 60.000 | Cum GPA: | 4.000 | 114.000 | 114.000 | 114.000 | 456.000 |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 | Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 |
| Combined GPA | 4.000 | 15.000 | 15.000 | 15.000 | 60.000 | Combined Cum GPA | 4.000 | 132.000 | 132.000 | 114.000 | 456.000 |
| | | | | | | Term Honor: | Dean's List With Distinction | | | | |

| | | AHRS | EHRS | QHRS | Points |
|------------------|------------------------------|---------|---------|--------|---------|
| Cum GPA: | 4.000 | 83.000 | 83.000 | 83.000 | 332.000 |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 |
| Combined Cum GPA | 4.000 | 101.000 | 101.000 | 83.000 | 332.000 |
| Term Honor: | Dean's List With Distinction | | | | |

Spring 2017

| Course | Description | AHRS | EHRS | Grade | Points |
|-----------|-------------------------------|-------|-------|-------|--------|
| HIST 271 | History of Christianity | 3.000 | 3.000 | A | 12.000 |
| HIST 317A | Hist Early Modrn Ireland | 3.000 | 3.000 | A | 12.000 |
| HIST 484 | Hist Arab/Israeli Confl | 3.000 | 3.000 | A | 12.000 |
| SBS 200 | Intro to Stats for Social Sci | 4.000 | 4.000 | A | 16.000 |
| SGPP 300A | Politics, Policy & Govern-US | 3.000 | 3.000 | A | 12.000 |

| | | AHRS | EHRS | QHRS | Points |
|-------------------|-------|--------|--------|--------|--------|
| Term GPA: | 4.000 | 16.000 | 16.000 | 16.000 | 64.000 |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 |
| Combined GPA | 4.000 | 16.000 | 16.000 | 16.000 | 64.000 |

| | | AHRS | EHRS | QHRS | Points |
|------------------|--|---------|---------|--------|---------|
| Cum GPA: | 4.000 | 99.000 | 99.000 | 99.000 | 396.000 |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 |
| Combined Cum GPA | 4.000 | 117.000 | 117.000 | 99.000 | 396.000 |
| Term Honor: | Dean's List With Distinction Academic Year Highest Academic Distinction | | | | |

Fall 2017

| Course | Description | AHRS | EHRS | Grade | Points |
|-----------|------------------------------|-------|-------|-------|--------|
| ANTH 389 | Mid East Ethnic+Rel Minr | 3.000 | 3.000 | A | 12.000 |
| HIST 277A | History of Middle East | 3.000 | 3.000 | A | 12.000 |
| HIST 498 | Senior Capstone | 3.000 | 3.000 | A | 12.000 |
| POL 442A | Euro Politics & Society | 3.000 | 3.000 | A | 12.000 |
| SGPP 300B | Politics, Policy & Govern-US | 3.000 | 3.000 | A | 12.000 |

| | | AHRS | EHRS | QHRS | Points |
|-------------------|-------|--------|--------|--------|--------|
| Term GPA: | 4.000 | 15.000 | 15.000 | 15.000 | 60.000 |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 |
| Combined GPA | 4.000 | 15.000 | 15.000 | 15.000 | 60.000 |

| Course | Description | AHRS | EHRS | Grade | Points |
|-----------|--------------------------|-------|-------|-------|--------|
| HIST 277B | History of Middle East | 3.000 | 3.000 | A | 12.000 |
| HIST 436 | Civil War+Reconstruction | 3.000 | 3.000 | A | 12.000 |
| MENA 377 | Modern Israel | 3.000 | 3.000 | A | 12.000 |
| POL 365 | Contemporary Intrnl Pol | 3.000 | 3.000 | A | 12.000 |

| | | AHRS | EHRS | QHRS | Points |
|-------------------|-------|--------|--------|--------|--------|
| Term GPA: | 4.000 | 12.000 | 12.000 | 12.000 | 48.000 |
| Transfer Term GPA | | 0.000 | 0.000 | 0.000 | 0.000 |
| Combined GPA | 4.000 | 12.000 | 12.000 | 12.000 | 48.000 |

| | | AHRS | EHRS | QHRS | Points |
|------------------|-------------------|---------|---------|---------|---------|
| Cum GPA: | 4.000 | 126.000 | 126.000 | 126.000 | 504.000 |
| Transfer Cum GPA | | 18.000 | 18.000 | 0.000 | 0.000 |
| Combined Cum GPA | 4.000 | 144.000 | 144.000 | 126.000 | 504.000 |
| Term Honor: | Honorable Mention | | | | |

End of Undergraduate Record



Alex Underwood
University Registrar

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Office of the Registrar

Registration and Transcripts

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Transcript Guide to Coursework Beginning Spring 1988

Course Numbering System

| | |
|-----------|--|
| 100 - 299 | Lower Division |
| 300 - 399 | Upper Division |
| 400 - 499 | Upper Division & Graduate |
| 500 - 599 | Graduate |
| 600 - 699 | Graduate & Professional |
| 700 - 799 | Graduate (Doctoral course work only) |
| 800 - 899 | Medicine & Pharmacy (Pharmacy effective Fall 1983) |
| 900 - 999 | Independent Graduate Study |

Current / Cumulative Status Abbreviation System

| | |
|--------|--|
| AHRS | Attempted Hours: the total number of units registered for by the student |
| EHRS | Earned Hours: the total number of units earned by the student including transfer units |
| QHRS | Quality Hours: Completed units of A, B, C, D, and E |
| Points | Quality Points: Points assigned for grades of A, B, C, D, and E |

Grade Replacement Opportunity Policy: The grade earned on the first attempt will remain on the academic transcript; however, only the second grade will count in the grade point average. Grades of O, W, WC, WF, WO, WP, or XO do not replace the original grade.

Academic Renewal Granted (Notation): Academic Renewal has been granted. All courses in the affected terms are disregarded in all calculations of academic standing, grade point average, and eligibility for graduation.

Second Start: Terms marked with Second Start have had academic renewal applied. All grades are disregarded in cumulative GPA.

Unit System (Credit Hour) Semesters: A unit usually represents 50 minutes of lecture or recitation or three hours of laboratory work per week for a semester of 15 weeks exclusive of the period of final examinations. (Prior to 1988, 1st = Fall Semester, 2nd = Spring Semester, 1S = 1st Summer Session, 2S = 2nd Summer Session.)

SUN Courses: Shared Unique Number (SUN) courses transfer with direct equivalency among Arizona's public community colleges and three state universities. <https://www.aztransfer.com/sun>

Student in Good Standing unless otherwise stated

For more detailed explanation of grading policies see the General Catalog. <https://catalog.arizona.edu>

For additional information or updates visit the Office of the Registrar website. <https://registrar.arizona.edu/transcript-key>

Grading System

The University of Arizona bases its grade point average (GPA) on a 4.00 grading scale. (Degrees awarded prior to 1973 reflect a CUM GPA using a reverse scale: Highest = 1.0, Lowest = 5.0)

The following grades are included in the calculations of grade point averages:

| GRADE ¹ | GRADE POINTS PER UNIT |
|--------------------|-----------------------|
| A | 4.0 |
| A- | 3.667 |
| B+ | 3.333 |
| B | 3.0 |
| B- | 2.667 |
| C+ | 2.333 |
| C | 2.0 |
| C- | 1.667 |
| D+ | 1.333 |
| D | 1.0 |
| D- | 0.667 |
| E* | 0 |

*E = Fail

The following grades are **not** included in the calculations of grade point averages:

| | |
|-------|--|
| Blank | No Grade Submitted ⁴ |
| CR | Credit |
| F | Fail |
| HP | High Pass ² |
| I | Incomplete |
| IP | In Progress ³ |
| K | Course in Progress |
| O | Audit |
| P | Pass |
| S | Superior |
| W | Approved Withdrawal |
| WC | Approved Complete Withdrawal ⁶ |
| WF | Approved Withdrawal from the University while Failing ³ |
| WO | Audit Withdrawal, see Audit Policy |
| WP | Approved Withdrawal from the University while Passing ³ |
| XO | Audit Administrative Withdrawal, see Audit Policy |
| Y | No Grade Due ⁵ |

Notes:

¹ Plus/Minus grading used only by College of Law

² Used only for medical clerkships effective Fall 2012

³ Upon complete withdrawal from the University—effective Fall 1998

⁴ Effective Spring 2003

⁵ Prior to Spring 2010, Y = No Grade Submitted

⁶ Effective Fall 2014

⁷ Effective Spring 2018 for College of Law and Colleges of Medicine

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